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United Nations

Report of the Committee on the Elimination of Racial Discrimination

Sixty-eighth session (20 February-10 March 2006)
Sixty-ninth session (31 July-8 August 2006)

General Assembly
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Supplement No. 18 (A/61/18)

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CONTENTS

Chapter		*Paragraphs*	*Page*
Letter of transmittal			1
I.	ORGANIZATIONAL AND RELATED MATTERS	1 - 16	3
	A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination	1 - 2	3
	B. Sessions and agendas	3 - 4	3
	C. Membership and attendance	5 - 6	3
	D. Officers of the Committee	7	4
	E. Cooperation with the International Labour Organization, the Office of the United Nations High Commissioner for Refugees, the United Nations Educational, Scientific and Cultural Organization, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the independent expert on minority issues	8 - 12	5
	F. Other matters	13 - 15	5
	G. Adoption of the report	16	6
II.	PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES	17 - 19	7
	A. Decision 1 (68) on the United States of America	19	7
	B. Decision 1 (69) on Suriname	19	10
III.	CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION	20 - 459	12
	Bosnia and Herzegovina	20 - 49	12
	Botswana	50 - 77	18

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CONTENTS (*continued*)

Chapter		*Paragraphs*	*Page*
	El Salvador	78 - 100	24
	Guatemala	101 - 128	28
	Guyana	129 - 157	33
	Lithuania	158 - 187	38
	Mexico	188 - 209	43
	Uzbekistan	210 - 237	47
	Denmark	238 - 262	51
	Estonia	263 - 290	56
	Mongolia	291 - 319	60
	Norway	320 - 348	65
	Oman	349 - 376	69
	South Africa	377 - 410	73
	Ukraine	411 - 434	80
	Yemen	435 - 459	84
IV.	FOLLOW-UP TO THE CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION	460 - 463	89
V.	REVIEW OF THE IMPLEMENTATION OF THE CONVENTION IN STATES PARTIES THE REPORTS OF WHICH ARE SERIOUSLY OVERDUE	464 - 474	90
	A. Reports overdue by at least 10 years	464	90
	B. Reports overdue by at least five years	465	91
	C. Action taken by the Committee to ensure submission of reports by States parties	466 - 470	92
	D. Decisions	471 - 474	93

CONTENTS (*continued*)

Chapter		*Paragraphs*	*Page*
VI.	CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION	475 - 484	95
VII.	FOLLOW-UP TO INDIVIDUAL COMMUNICATIONS	485 - 489	97
VIII.	GENERAL DEBATES AND STATEMENTS	490 - 491	100
IX.	CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION	492 - 496	101
X.	ACTION TAKEN BY THE GENERAL ASSEMBLY AT ITS SIXTIETH SESSION	497 - 498	103
XI.	FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE	499 - 502	104
XII.	DISCUSSION ON REFORM OF THE TREATY BODY SYSTEM	503 - 506	105

CONTENTS (*continued*)

Annexes *Page*

I. STATUS OF THE CONVENTION 107

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (170) as at 18 August 2006 107

B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (47), as at 18 August 2006 107

C. States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties (42), as at 18 August 2006 108

II. AGENDAS OF THE SIXTY-EIGHTH AND SIXTY-NINTH SESSIONS 109

A. Sixty-eighth session (20 February-10 March 2006) 109

B. Sixty-ninth session (31 July-18 August 2006) 109

III. RULES OF PROCEDURE 111

IV. DECISIONS OF THE COMMITTEE UNDER ARTICLE 14 OF THE CONVENTION 112

Sixty-eighth session 112

No. 29/2003 (*Dragan Durmic v. Serbia and Montenegro*) 112

No. 34/2004 (*Mohammed Hassan Gelle v. Denmark*) 124

V. CASES IN WHICH THE COMMITTEE ADOPTED RECOMMENDATIONS AND FOLLOW-UP INFORMATION PROVIDED IN RELATION THERETO 133

VI. GUIDELINES ON FOLLOW-UP TO CONCLUDING OBSERVATIONS AND RECOMMENDATIONS 147

VII. DOCUMENTS RECEIVED BY THE COMMITTEE AT ITS SIXTY-EIGHTH AND SIXTY-NINTH SESSIONS IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION 149

CONTENTS (*continued*)

Annexes *Page*

VIII. COUNTRY RAPPORTEURS FOR REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AND FOR STATES PARTIES CONSIDERED UNDER THE REVIEW PROCEDURE AT THE SIXTY-EIGHTH AND SIXTY-NINTH SESSIONS 150

IX. LIST OF DOCUMENTS ISSUED FOR THE SIXTY-EIGHTH AND SIXTY-NINTH SESSIONS OF THE COMMITTEE 152

Letter of transmittal

18 August 2006

Sir,

It is with pleasure that I transmit the annual report of the Committee on the Elimination of Racial Discrimination.

The International Convention on the Elimination of All Forms of Racial Discrimination, which has now been ratified by 170 States, constitutes the normative basis upon which international efforts to eliminate racial discrimination should be built.

During the past year, the Committee continued with a significant workload in terms of the examination of States parties' reports (discussed in chapter III) in addition to other related activities. The Committee also examined the situation of several States parties under its early warning and urgent procedures (see chapter II) and under its follow-up procedure (see chapter IV). In order to continue its consideration of subjects of general interest, the Committee held a general debate on the issue of double discrimination on the grounds of race and religion at its sixty-eighth session, and a general debate on the situation in Lebanon at its sixty-ninth session, during which it also adopted a statement on the situation in that country, highlighting the risk that the conflict could lead to an intensification of racial discrimination and hatred in the region and in the wider world (see chapter VIII).

As important as the Committee's contributions have been to date, there is obviously some room for improvement. At present, only 47 States parties (see annex I) have made the optional declaration recognizing the Committee's competence to receive communications under article 14 of the Convention and, as a consequence, the individual communications procedure is underutilized, as indeed is also the inter-State complaints procedure.

Furthermore, only 42 States parties have so far ratified the amendments to article 8 of the Convention adopted at the Fourteenth Meeting of States Parties (see annex I), despite repeated calls from the General Assembly to do so. These amendments provide, inter alia, for the financing of the Committee from the regular budget of the United Nations. The Committee appeals to States parties that have not yet done so to consider making the declaration under article 14 and ratifying the amendments to article 8 of the Convention.

His Excellency Mr. Kofi Annan
Secretary-General of the United Nations
New York

The Committee remains committed to a continual process of reflection on and improvement of its working methods, with the aim of maximizing its effectiveness. In this connection, the Committee decided to include in its annual report a new chapter (see chapter VII) as well as an annex with information on follow-up by States parties to the recommendations adopted by the Committee after its consideration of communications from individuals or groups of individuals pursuant to article 14, paragraph 7, of the Convention (see annex V). During the sixty-ninth session, the Committee also discussed the reform of the treaty body system (see chapter XII).

At the present time, perhaps more than ever, there is a pressing need for the United Nations human rights bodies to ensure that their activities contribute to the harmonious and equitable coexistence of peoples and nations. In this sense, I wish to assure you once again, on behalf of all the members of the Committee, of our determination to continue working for the promotion of the implementation of the Convention and to support all activities that contribute to combating racism, racial discrimination and xenophobia throughout the world.

I have no doubt that the dedication and professionalism of the members of the Committee, as well as the pluralistic and multidisciplinary nature of their contributions, will ensure that the work of the Committee contributes significantly to the implementation of both the Convention and the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in the years ahead.

Please accept, Sir, the assurances of my highest consideration.

(*Signed*): Régis de Gouttes
Chairperson
Committee on the Elimination
of Racial Discrimination

I. ORGANIZATIONAL AND RELATED MATTERS

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination

1. As at 18 August 2006, the closing date of the sixty-ninth session of the Committee on the Elimination of Racial Discrimination, there were 170 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted by the General Assembly in resolution 2106A (XX) of 21 December 1965 and opened for signature and ratification in New York on 7 March 1966. The Convention entered into force on 4 January 1969 in accordance with the provisions of its article 19.

2. By the closing date of the sixty-ninth session, 47 of the 170 States parties to the Convention had made the declaration envisaged in article 14, paragraph 1, of the Convention. Article 14 of the Convention entered into force on 3 December 1982, following the deposit with the Secretary-General of the tenth declaration recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals who claim to be victims of a violation by the State party concerned of any of the rights set forth in the Convention. Lists of States parties to the Convention and of those which have made the declaration under article 14 are contained in annex I to the present report, as is a list of the 42 States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties, as at 18 August 2006.

B. Sessions and agendas

3. The Committee on the Elimination of Racial Discrimination held two regular sessions in 2006. The sixty-eighth (1730th to 1759th meetings) and sixty-ninth (1760th to 1786th meetings) sessions were held at the United Nations Office at Geneva from 20 February to 10 March 2006 and from 31 July to 18 August, respectively.

4. The agendas of the sixty-eighth and sixty-ninth sessions, as adopted by the Committee, are reproduced in annex II.

C. Membership and attendance

5. The list of members of the Committee for 2006-2007 is as follows:

Name of member	Country of nationality	Term expires 19 January
Mr. Mahmoud ABOUL-NASR	Egypt	2010
Mr. Nourredine AMIR	Algeria	2010
Mr. Alexei S. AVTONOMOV	Russian Federation	2008
Mr. Ralph F. BOYD Jr.	United States of America	2008
Mr. José Francisco CALI TZAY	Guatemala	2008

Name of member	Country of nationality	Term expires 19 January
Ms. Fatimata-Binta Victoire DAH	Burkina Faso	2008
Mr. Kokou Mawuena Ika Kana EWOMSAN	Togo	2010
Mr. Régis de GOUTTES	France	2010
Ms. Patricia Nozipho JANUARY-BARDILL	South Africa	2008
Mr. Morten KJAERUM	Denmark	2010
Mr. José A. LINDGREN ALVES	Brazil	2010
Mr. Raghavan Vasudevan PILLAI	India	2008
Mr. Agha SHAHI	Pakistan	2010
Mr. Linos Alexander SICILIANOS	Greece	2010
Mr. TANG Chengyuan	China	2008
Mr. Patrick THORNBERRY	United Kingdom of Great Britain and Northern Ireland	2010
Mr. Luis VALENCIA RODRÍGUEZ	Ecuador	2008
Mr. Mario Jorge YUTZIS	Argentina	2008

6. All members of the Committee attended the sixty-eighth and sixty-ninth sessions.

D. Officers of the Committee

7. At its 1730th meeting (sixty-eighth session), on 20 February 2006, the Committee elected the Chairperson, Vice-Chairpersons and Rapporteur as listed below in accordance with article 10, paragraph 2, of the Convention, for the terms indicated in brackets.

Chairperson:	Mr. Régis de GOUTTES (2006-2008)
Vice-Chairpersons:	Ms. Fatimata-Binta Victoire DAH (2006-2008) Mr. Raghavan Vasudevan PILLAI (2006-2008) Mr. Mario YUTZIS (2006-2008)
Rapporteur:	Mr. Patrick THORNBERRY (2006-2008)

E. Cooperation with the International Labour Organization, the Office of the United Nations High Commissioner for Refugees, the United Nations Educational, Scientific and Cultural Organization, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the independent expert on minority issues

8. In accordance with Committee decision 2 (VI) of 21 August 1972 concerning cooperation with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO),[1] both organizations were invited to attend the sessions of the Committee. Consistent with the Committee's recent practice, the Office of the United Nations High Commissioner for Refugees (UNHCR) was also invited to attend.

9. Reports of the ILO Committee of Experts on the Application of Conventions and Recommendations submitted to the International Labour Conference were made available to the members of the Committee on the Elimination of Racial Discrimination, in accordance with arrangements for cooperation between the two committees. The Committee took note with appreciation of the reports of the Committee of Experts, in particular of those sections which dealt with the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as other information in the reports relevant to its activities.

10. UNHCR submits comments to the members of the Committee on all States parties whose reports are being examined when UNHCR is active in the country concerned. These comments make reference to the human rights of refugees, asylum-seekers, returnees (former refugees), stateless persons and other categories of persons of concern to UNHCR. UNHCR representatives attend the sessions of the Committee and report back on any issues of concern raised by Committee members. At the country level, although there is no systematic follow-up to the implementation of the Committee's concluding observations and recommendations in the 130 UNHCR field operations, these are regularly included in activities designed to mainstream human rights in their programmes.

11. Mr. Doudou Diène, Special Rapporteur of the Commission on Human Rights on racism, contemporary forms of racism, racial discrimination, xenophobia and related intolerance addressed the Committee at its 1752nd meeting (sixty-eighth session), on 7 March 2006. He informed the Committee about his recent activities, and a fruitful discussion ensued.

12. Ms. Gay McDougall, independent expert on minority issues, held a dialogue with the Committee at its 1769th meeting (sixty-ninth session), on 8 August 2006. Several proposals for developing cooperation between the Committee and the independent expert were discussed.

F. Other matters

13. Ms. María-Francisca Ize-Charrin, Chief of the Treaties and Council Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR), addressed the Committee at its 1730th meeting (sixty-eighth session), on 20 February 2006.

14. Mr. Alessio Bruni, Treaty Implementation Team Leader of OHCHR, addressed the Committee at its 1760th meeting (sixty-ninth session), on 31 July 2006.

15. At its 1778th meeting (sixty-ninth session), on 14 August 2006, the Committee decided to amend rule 26 of its rules of procedure relating to official and working languages. In accordance with this amendment, Arabic is now an official language of the Committee. The text of rule 26 as amended can be found in annex III.

G. Adoption of the report

16. At its 1786th meeting (sixty-ninth session), on 18 August 2006, the Committee adopted its annual report to the General Assembly.

Note

[1] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18* (A/8718), chap. IX, sect. B.

II. PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES

17. The Committee, at its 979th meeting, on 17 March 1993, adopted a working paper to guide it in its future work concerning possible measures to prevent, as well as more effectively respond to, violations of the Convention.[1] The Committee noted in its working paper that efforts to prevent serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination would include early warning measures and urgent procedures.

18. At its 1659th meeting (sixty-fifth session), the Committee established a working group on early warning and urgent action procedures. This working group includes the following five members of the Committee:

Coordinator: Ms. Patricia Nozipho January-Bardill

Members: Mr. Alexei S. Avtonomov
Mr. José Francisco Cali Tzay
Mr. Alexander Linos Sicilianos
Mr. Agha Shahi

19. The following decisions were adopted by the Committee under the early warning and urgent procedures at its sixty-eighth and sixty-ninth sessions:

A. Decision 1 (68) on the United States of America

A. Introduction

1. At its sixty-seventh session held from 2 to 19 August 2005, the Committee considered on a preliminary basis requests submitted by the Western Shoshone National Council, the Timbisha Shoshone Tribe, the Winnemucca Indian Colony and the Yomba Shoshone Tribe, asking the Committee to act under its early warning and urgent action procedure on the situation of the Western Shoshone indigenous peoples in the United States of America.

2. Considering that the opening of a dialogue with the State party would assist in clarifying the situation before the submission and examination of the fourth and fifth periodic reports of the United States of America, due on 20 November 2003, the Committee, in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, invited the State party, in a letter dated 19 August 2005, to respond to a list of questions, with a view to considering this issue at its sixty-eighth session.

3. Responding to the Committee's letter, the State party, in its letter dated 15 February 2006, stated that its overdue periodic reports are being prepared and that they will include responses to the list of issues. The Committee regrets that the State party has not undertaken to submit its periodic reports by a specific date, that it has not provided responses to the list of issues by 31 December 2005 as requested, and that it did not consider it necessary to appear before the Committee to discuss the matter.

4. The Committee has received credible information alleging that the Western Shoshone indigenous peoples are being denied their traditional rights to land, and that measures taken and even accelerated lately by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to these communities. In light of such information, and in the absence of any response from the State party, the Committee decided at its sixty-eighth session to adopt the present decision under its early warning and urgent action procedure. This procedure is clearly distinct from the communication procedure under article 14 of the Convention. Furthermore, the nature and urgency of the issue examined in this decision go well beyond the limits of the communication procedure.

B. Concerns

5. The Committee expresses concern about the lack of action taken by the State party to follow up on its previous concluding observations, in relation to the situation of the Western Shoshone peoples (A/56/18, para. 400, adopted on 13 August 2001). Although these are indeed long-standing issues, as stressed by the State party in its letter, they warrant immediate and effective action from the State party. The Committee therefore considers that this issue should be dealt with as a matter of priority.

6. The Committee is concerned by the State party's position that Western Shoshone peoples' legal rights to ancestral lands have been extinguished through gradual encroachment, notwithstanding the fact that the Western Shoshone peoples have reportedly continued to use and occupy the lands and their natural resources in accordance with their traditional land tenure patterns. The Committee further notes with concern that the State party's position is made on the basis of processes before the Indian Claims Commission, "which did not comply with contemporary international human rights norms, principles and standards that govern determination of indigenous property interests", as stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann versus United States* (Case 11.140, 27 December 2002).

7. The Committee is of the view that past and new actions taken by the State party on Western Shoshone ancestral lands lead to a situation where, today, the obligations of the State party under the Convention are not respected, in particular the obligation to guarantee the right of everyone to equality before the law in the enjoyment of civil, political, economic, social and cultural rights, without discrimination based on race, colour, or national or ethnic origin. The Committee recalls its general recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources, and expresses particular concern about:

(a) Reported legislative efforts to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;

(b) Information according to which destructive activities are conducted and/or planned on areas of spiritual and cultural significance to the Western Shoshone peoples, who are denied access to, and use of, such areas. It notes in particular the reinvigorated federal efforts to open a nuclear waste repository at the Yucca Mountain; the alleged use of explosives and open pit gold mining activities on Mont Tenabo and Horse Canyon; and the alleged issuance of geothermal energy leases at, or near, hot springs, and the processing of further applications to that end;

(c) The reported resumption of underground nuclear testing on Western Shoshone ancestral lands;

(d) The conduct and/or planning of all such activities without consultation with and despite protests of the Western Shoshone peoples;

(e) The reported intimidation and harassment of Western Shoshone people by the State party's authorities, through the imposition of grazing fees, trespass and collection notices, impounding of horse and livestock, restrictions on hunting, fishing and gathering, as well as arrests, which gravely disturb the enjoyment of their ancestral lands;

(f) The difficulties encountered by Western Shoshone peoples in appropriately challenging all such actions before national courts and in obtaining adjudication on the merits of their claims, due in particular to domestic technicalities.

C. Recommendations

8. The Committee recommends to the State party that it respect and protect the human rights of the Western Shoshone peoples, without discrimination based on race, colour, or national or ethnic origin, in accordance with the Convention. The State party is urged to pay particular attention to the right to health and cultural rights of the Western Shoshone people, which may be infringed upon by activities threatening their environment and/or disregarding the spiritual and cultural significance they give to their ancestral lands.

9. The Committee urges the State party to take immediate action to initiate a dialogue with the representatives of the Western Shoshone peoples in order to find a solution acceptable to them, and which complies with their rights under, in particular, articles 5 and 6 of the Convention. In this regard also, the Committee draws the attention of the State party to its general recommendation 23 (1997) on the rights of indigenous peoples, in particular their right to own, develop, control and use their communal lands, territories and resources.

10. The Committee urges the State party to adopt the following measures until a final decision or settlement is reached on the status, use and occupation of Western Shoshone ancestral lands in accordance with due process of law and the State party's obligations under the Convention:

(a) Freeze any plan to privatize Western Shoshone ancestral lands for transfer to multinational extractive industries and energy developers;

(b) Desist from all activities planned and/or conducted on the ancestral lands of Western Shoshone or in relation to their natural resources, which are being carried out without consultation with and despite protests of the Western Shoshone peoples;

(c) Stop imposing grazing fees, trespass and collection notices, horse and livestock impoundments, restrictions on hunting, fishing and gathering, as well as arrests, and rescind all notices already made to that end, inflicted on Western Shoshone people while using their ancestral lands.

11. In accordance with article 9 (1) of the Convention, the Committee requests that the State party provide it with information on action taken to implement the present decision by 15 July 2006.

B. Decision 1 (69) on Suriname

1. The Committee, recalling its decisions 3 (66) of March 2005[2] and 1 (67) of August 2005[3] on Suriname, reiterates its deep concern about information alleging that the State party has authorized additional resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous and tribal peoples, without any formal notification to the affected communities and without seeking their prior agreement or informed consent.

2. Drawing once again the attention of the State party to its general recommendation 23 (1997) on the rights of indigenous peoples, the Committee strongly recommends the State party to:

(a) Ensure legal acknowledgement of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources;

(b) Strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions;

(c) Ensure that indigenous and tribal peoples are granted the right of appeal to the courts, or any independent body specifically created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage;

(d) Elaborate a framework law on the rights of indigenous and tribal peoples and take advantage of the technical assistance available under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights for that purpose;

(e) Extend an invitation to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to visit its territory.

3. The Committee requests that detailed information on the above-mentioned issues be included in the eleventh to thirteenth periodic reports of the State party, to be submitted in a single document on 14 April 2007. The Committee also wishes to receive, as previously requested, detailed information on the current status of the revised draft Mining Act and its compliance with the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the Committee's 2004 concluding observations.

4. The Committee draws the attention of the High Commissioner for Human Rights as well as the competent United Nations bodies, in particular the Human Rights Council, to the particularly alarming situation in relation to the rights of indigenous and tribal peoples in Suriname, and invites them to take all appropriate measures in this regard.

1785th meeting
18 August 2006

Notes

[1] *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18* (A/48/18), para. 18 and annex III.

[2] CERD/C/66/SUR/Dec.3.

[3] See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18* (A/60/18), chap. II.

III. CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

BOSNIA AND HERZEGOVINA

20. The Committee considered the initial to sixth periodic reports (the "Report") of Bosnia and Herzegovina due from 1994 to 2004, respectively, and submitted in one document (CERD/C/464/Add.1), at its 1735th and 1736th meetings (CERD/C/SR.1735 and 1736), held on 22 and 23 February 2006. At its 1754th and 1755th meetings (CERD/C/SR.1754 and 1755), held on 8 March 2006, it adopted the following concluding observations.

A. Introduction

21. The Committee welcomes the report submitted by Bosnia and Herzegovina and the opportunity thus offered to open a constructive dialogue with the State party. It regrets, however, that, according to the State party, insufficient financial and human resources were available for the preparation of the report, which was submitted more than one year after its completion in 2004, and that only a limited number of non-governmental organizations were consulted during the preparation process. The Committee nevertheless appreciates and is encouraged by the frank, detailed, and often self-critical answers the delegation gave in response to the Committee's many questions.

22. While acknowledging the constraints faced by the State party in the aftermath of the armed conflict on its territory from 1992 to 1995, the Committee notes that the Report was more than 10 years overdue when submitted. It invites the State party to make every effort to respect the deadlines for the submission of its future reports.

B. Factors and difficulties impeding the implementation of the Convention

23. The Committee notes that the structure of the current Constitution of Bosnia and Herzegovina allocates certain important rights on an explicit ethnic basis. The Committee recognizes that this structure arises out of the Dayton/Paris Peace Agreement and that it may have been necessary, on an interim basis, to secure peace in the aftermath of the armed conflict. However, the Committee also notes that the Constitution's current assignment of important rights based expressly on ethnicity may impede the full implementation of the Convention.

C. Positive aspects

24. The Committee appreciates the delegation's assurances concerning the State party's willingness to proceed with meaningful legislative and institutional reforms aimed at eliminating racial discrimination and, in this context, to engage in a constructive dialogue with the Committee, with a view towards ensuring equality between and among all ethnic groups within the territory of the State party. More specifically, the Committee notes that in its dialogue with the Committee, the State party itself recognized the need to amend its Constitution and Election Law to implement the Convention. To that end, the State party represented to the Committee that it already has taken specific measures to do so.

25. The Committee notes with satisfaction that the State party has ratified all of the core United Nations human rights treaties, that the International Convention on the Elimination of all Forms of Racial Discrimination (the "Convention") is incorporated into the domestic law of the State party, that the Convention has the same standing as the Constitution of the State party, and that the Convention can be directly applied in the State party's courts.

26. The Committee welcomes the progress made by the State party in reducing the number of incidents in which attempts to return to pre-armed conflict residences have been impeded by force, violence, or threats of force or violence, in particular the State party's prosecutions and punishment of the perpetrators of such acts under sections 145 and 146 of the Criminal Code of Bosnia and Herzegovina.

D. Concerns and recommendations

27. The Committee is concerned about the lack of updated statistical data on the ethnic composition of the population, as well as on the number and nature of reported acts of racial discrimination within the territory of the State party. It notes that the last census was conducted in 1991, that is, before the armed conflict which caused significant demographic changes within the territory of the State party. In the absence of such statistical information, the Committee finds it difficult to assess the extent of ethnic discrimination within the territory of the State party.

The Committee recommends to the State party that it endeavour to collect disaggregated statistical data on the ethnic composition of its population and establish adequate mechanisms for monitoring acts of ethnically motivated discrimination and violence among its different ethnic groups.

28. The Committee notes with concern reports about the lack of adequate funds for, and the lack of financial autonomy of the Human Rights Ombudsman of Bosnia and Herzegovina, as well as reports that the effectiveness and efficiency of the institution are diminished by its tripartite structure.

The Committee recommends to the State party that it ensure the financial autonomy and functional effectiveness of the Office of the Ombudsman, in accordance with the Paris Principles of 1993,[1] and that in the event of a merger among the Ombudsman Offices of the State and its constituent entities, such consolidation proceed with a view towards ensuring a unitary rather than ethnically divided approach to defending fundamental human rights.

29. The Committee is concerned that the catalogue of human rights and fundamental freedoms contained in article II (3) of the Constitution of Bosnia and Herzegovina, which are covered by the prohibition of discrimination in article II (4), does not include all civil, cultural, economic, political and social rights protected under article 5 of the Convention (art. 2 (1) (c)).

The Committee recommends that the State party take the necessary legislative measures to ensure that the prohibition of ethnic discrimination contained in article II (4) of the Constitution of Bosnia and Herzegovina applies with respect to the enjoyment of all of the rights and freedoms set forth in article 5 of the Convention.

30. The Committee is deeply concerned that under articles IV and V of the State Constitution, only persons belonging to a group considered by law to be one of Bosnia and Herzegovina's "constituent peoples" (Bosniaks, Croats, and Serbs), which group also constitutes the dominant majority within the Entity in which the person resides (e.g. Bosniaks and Croats within the Federation of Bosnia and Herzegovina, and Serbs within the Republika Srpska), can be elected to the House of Peoples and to the tripartite Presidency of Bosnia and Herzegovina. The existing legal structure therefore excludes from the House of Peoples and the Presidency all persons who are referred to as "Others", that is persons belonging to national minorities or ethnic groups other than Bosniaks, Croats, or Serbs. Although the tripartite structure of the State party's principal political institutions may have been justified, or even initially necessary to establish peace following the armed conflict within the territory of the State party, the Committee notes that legal distinctions that favour and grant special privileges and preferences to certain ethnic groups are not compatible with articles 1 and 5 (c) of the Convention. The Committee further notes that this is especially true when the exigency for which the special privileges and preferences were undertaken has abated (arts. 1 (4) and 5 (c)).

The Committee urges the State party to proceed with amending the relevant provisions of the State Constitution and the Election Law, with a view to ensuring the equal enjoyment of the right to vote and to stand for election by all citizens irrespective of ethnicity.

31. The Committee expresses its concern that the State and Entity Constitutions allocate certain authority to, and confer specific rights exclusively on members of the so-called "constituent peoples" (Bosniaks, Croats and Serbs), and that persons not belonging to one of these ethnic groups are formally referred to as "Others" (art. 2 (1) (c)).

The Committee urges that the State party ensure that all rights provided by law are granted, both in law and in fact, to every person within the territory of the State party, irrespective of race or ethnicity. The Committee strongly recommends that the State party review and remove all discriminatory language from the State and Entity Constitutions, and from all legislative and other domestic law texts, including especially, but not limited to, distinctions between so-called "constituent peoples" and "Others".

32. While noting with favour the existence of several criminal law provisions punishing acts of racial discrimination, the Committee is concerned about the absence of comprehensive anti-discrimination legislation, including especially legislation and regulations in the civil and administrative fields, which make unlawful acts of racial discrimination that may not constitute criminal offences (art. 2 (1) (d)).

The Committee recommends that the State party enact comprehensive administrative, civil and/or criminal anti-discrimination legislation, which prohibits acts of racial discrimination in employment, housing, health care, social security (including pensions), education and public accommodations.

33. The Committee is concerned about information that the Roma Council, which was established in 2002 and is composed of non-governmental organizations representing the interests of the Roma population, does not have sufficient funding or resources to fulfil its mandate, and is rarely consulted by the Council of Ministers of Bosnia and Herzegovina (art. 2 (1) (e)).

The Committee recommends that the State party strengthen the role of the Roma Council by providing sufficient funds for the Council to effectively carry out its mandate, and that the Council be consulted in connection with any decision-making processes that impact the rights and interests of the Roma population, in accordance with the Committee's general recommendation 27.[2]

34. The Committee notes with concern that the National Strategy for Roma reportedly fails to identify specific measures, allocate sufficient funds, or identify competent bodies to which responsibility for implementing the strategy is assigned (art. 2 (2)).

The Committee recommends that the State party review the National Strategy for Roma to ensure that it identifies specific measures, establishes adequate budgetary allocations, and identifies the bodies responsible for its implementation.

35. The Committee notes with concern reports about the lack of effective implementation of criminal law provisions, such as articles 145 and 146 of the Criminal Code of Bosnia and Herzegovina, punishing acts of racial discrimination (arts. 4 (a) and 6).

The Committee urges that the State party ensure the effective implementation of all legal provisions aimed at eliminating racial discrimination, and that it provide in its next report updated information concerning the application by courts within Bosnia and Herzegovina of criminal law provisions punishing acts of racial discrimination, in particular articles 145 and 146 of the Criminal Code of Bosnia and Herzegovina; such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any restitution or other remedies provided to victims of such acts.

36. The Committee is deeply concerned about the difficulties that many Roma experience in obtaining personal documents, including birth certificates, identification cards, passports and documents related to the provision of health insurance and social security benefits (art. 5 (e)).

The Committee urges the State party to take immediate steps, e.g. by removing administrative obstacles, to ensure that all Roma have access to personal documents that are necessary for them to enjoy, inter alia, their economic, social and cultural rights, such as employment, housing, health care, social security and education.

37. The Committee notes with concern that the claims of many workers belonging to certain ethnic minority groups who during the armed conflict were dismissed from their jobs and/or placed on waiting lists because of their ethnicity have not yet been resolved, and that workers whose cases have been resolved by the Entity and cantonal Commissions established under article 152 of the Republika Srpska Labour Law and article 143 of the Labour Law of the Federation often have not received any compensation (art. 5 (e) (i)).

The Committee urges the State party to ensure that the claims of all workers who were dismissed from their jobs and/or placed on waiting lists during the armed conflict because of their ethnicity are resolved expeditiously and that the recommendations of the Entity and cantonal Commissions are implemented promptly and in good faith.

38. The Committee is concerned about the low representation of ethnic minorities, in particular Roma, in the labour market (art. 5 (e) (i)).

The Committee recommends that the State party improve the employment of ethnic minorities, including in particular the Roma, in the public and private labour sectors, by implementing strategies that include offering training to qualify such persons for jobs in the labour market, providing incentives to employers for hiring such persons, and establishing an independent mechanism at the State level to address discrimination in the hiring and promotion practices in the public and private employment/labour sectors.

39. The Committee is deeply concerned that many people of different ethnic origin, especially the Roma, are unable to return to their pre-armed conflict homes because of the lack of legal title to their property or because of the authorities' failure to evict and punish temporary occupants who often vandalise or loot the homes before relinquishing possession of them. The Committee is also concerned about reports that many informal settlements in which Roma lived prior to the armed conflict have been destroyed, and that Roma continue to be evicted from their informal settlements, without adequate alternative accommodation being provided, and in view of the fact that Roma are frequently unable to rent private accommodation because of racial discrimination and/or poverty (art. 5 (e) (iii)).

Referring specifically to general recommendation 27,[3] the Committee urges the State party to facilitate the return of all people of different ethnic origin, especially the Roma, to their pre-armed conflict homes, to ensure their ability to occupy and reside in informal Roma settlements legally and safely, and where necessary, to provide adequate alternative housing or compensation for displaced Roma, including to pre-armed conflict tenants who have been evicted from their settlements or whose homes have been destroyed.

40. The Committee notes that although pension benefits are significantly higher in the Federation than in the Republika Srpska, pensioners who previously received their pensions in the Federation, but who were internally displaced to the Republika Srpska, continue to receive pensions from the Republika Srpska Pension Fund upon their return to the Federation. Furthermore, most internally displaced persons returning to their pre-armed conflict Entity of residence keep their health insurance status in the Entity where they resided while displaced because of complicated registration procedures and fear of discrimination in the places of their pre-armed conflict residence, despite the significant financial burdens imposed on them by virtue of having to commute between Entities to receive treatment or, alternatively, to bear the full costs of health services in the Entity to which they have returned (art. 5 (e) (iv)).

The Committee requests that the State party ensure that pension and health-care benefits are provided on a non-discriminatory basis, without regard to ethnicity, especially where minority returnees are involved. The Committee further recommends that the State party review the deployment of its pension benefits and health-care services and, for the time being, implement the Inter-Entity Agreement on health care.

41. The Committee is gravely concerned about the extremely low rates of primary and secondary school attendance by Roma children which, according to reports, are due primarily to the lack of means of most Roma families to finance clothing, transportation to school and learning materials for their children (art. 5 (e) (v)).

The Committee urges the State party to implement effectively the recommendations contained in the Action Plan on Educational Needs of Roma and Other National Minorities (2004), and to combat discrimination against Roma children and children belonging to other ethnic minority groups by teachers, school authorities, and classmates and their families.

42. The Committee is deeply concerned about the existence of mono-ethnic schools within the territory of the State party, and about the continued existence of 52 schools within the Federation which are characterized as being "two schools under one roof" wherein children of different ethnic backgrounds are physically segregated and taught different curricula (arts. 3 and 5 (e) (v)).

The Committee strongly urges the State party to end public school segregation, that is, that it eliminate mono-ethnic schools and schools that are structured as "two schools under one roof" as soon as possible. The Committee recommends that competent authorities within the State party unify previously segregated schools under one administration, intensify their efforts to remove ethnically discriminatory elements from textbooks, remove mono-ethnic or mono-religious symbols and flags from all schools, and implement a modernized common core curriculum for all schools within the territory of the State party, which is sensitive to the diverse cultural attributes of the various ethnic groups within the territory of the State party.

43. The Committee expresses its deep concern about the persistence of ethnic divisions within the society of the State party, which reinforce structural discrimination and institutionalized prejudice and intolerance (art. 7).

The Committee encourages the State party to actively support programmes that foster intercultural dialogue, and emphasize tolerance and understanding with respect to the culture and history of different ethnic groups within Bosnia and Herzegovina. The Committee further encourages the State party to promote such programmes in public education, and in political and media symposia, with a view towards fostering greater respect for, and appreciation of the role of diversity in forging a stronger sense of national unity in the context of a common, multi-ethnic concept of Bosnian citizenship.

44. The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

45. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and recommends that it consider doing so.

46. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this regard, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

47. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized, in all official languages of the State party, as well as in the languages of national minorities of Bosnia and Herzegovina.

48. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests that the State party inform it of its implementation of the recommendations contained in paragraphs 30, 37, 39, 41 and 42 above, within one year of the adoption of the present conclusions.

49. The Committee recommends to the State party that it submit its seventh and eighth periodic reports in a single report, due on 16 July 2008.

BOTSWANA

50. The Committee considered the fifteenth and sixteenth periodic reports of Botswana, submitted in one document (CERD/C/495/Add.1), at its 1749th and 1750th meetings (CERD/C/SR.1749 and 1750), held on 3 and 6 March 2006. At its 1757th meeting (CERD/C/SR.1757), held on 9 March 2005, it adopted the following concluding observations.

A. Introduction

51. The Committee welcomes with satisfaction the report submitted by Botswana, which has been elaborated in compliance with the reporting guidelines, and was submitted on time. The Committee appreciates the attendance of a high ranking delegation and expresses its satisfaction at the good quality of the dialogue held with Botswana since 2002, due in particular to the State party's willingness to respond in a frank manner to issues raised by the Committee, including within the framework of the follow-up procedure.

B. Positive aspects

52. The Committee welcomes the setting up of an Inter-Ministerial Committee on Treaties, Conventions and Protocols, with the mandate to facilitate the implementation of the reporting obligations of Botswana under the international instruments to which it is a party.

53. The Committee commends the State party for having consulted civil society organizations in the compilation of its report.

54. The Committee welcomes the efforts made by the State party to acknowledge in its periodic report the existence of ongoing debates at the domestic level on the implementation of the Convention.

C. Concerns and recommendations

55. The Committee regrets the sparse information provided by the State party regarding the ethnic and linguistic composition of its population. It recalls that information on population composition enables a better assessment of the implementation of the Convention at the national level, by the Committee as well as by the State party itself.

The Committee reiterates its recommendation that more precise information be included in the next periodic report on the ethnic and linguistic composition of the population, giving due consideration to paragraph 8 of the Committee's reporting guidelines.

56. The Committee notes that the Botswana Court of Appeal, in the case *Unity Dow v. the Attorney-General* (1992), interpreted Section 3 of the Constitution as a guarantee of the equal protection of the law for all. It remains concerned, however, that the definition of discrimination provided under this provision does not explicitly prohibit discrimination based on descent and national or ethnic origin, nor indirect discrimination.

The Committee recommends to the State party that it review Section 3 of the Constitution with a view to adopting a definition of racial discrimination which fully complies with article 1 of the Convention.

57. The Committee reiterates its concern that some exceptions to the prohibition of discrimination provided under section 15 of the Constitution cannot be justified under the Convention. In particular, subsection 4 (b) authorizes exceptions in relation to non-citizens to an extent not compatible with the Committee's general recommendation 30 (2004) on non-citizens. The Committee is also concerned that, by virtue of subsections 4 (c) and (d), the prohibition of non-discrimination on the basis of ethnic origin or tribe does not apply in matters of personal and customary law, and that subsection 9 authorizes the implementation of discriminatory laws in force before the coming into operation of the Constitution.

The Committee recommends to the State party that it review section 15 of the Constitution in order to ensure its full compliance with articles 1 and 2, paragraph 1 (c) of the Convention. In this context, the State party should take into

consideration the principle that, under the Convention, differential treatment constitutes discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and/or are not proportional to the achievement of this aim.

58. The Committee is concerned that the State party's objective to build a nation based on the principle of equality for all has been implemented in a way detrimental to the protection of ethnic and cultural diversity. The Committee notes in particular the State party's reluctance to recognize the existence of indigenous peoples on its territory (arts. 2 and 5).

The Committee, recalling that the principle of non-discrimination requires that the cultural characteristics of ethnic groups be taken into consideration, urges the State party to respect and protect the existence and cultural identity of all ethnic groups within its territory. The Committee also invites the State party to review its policy regarding indigenous peoples and, to that end, to take into consideration the way in which the groups concerned perceive and define themselves. The Committee recalls in this regard its general recommendations 8 (1990) on self-identification and 23 (1997) on the rights of indigenous peoples.

59. The Committee, while taking note of the willingness of the State party to ensure better representation in the House of Chiefs, remains concerned that Bill 34 (2004) amending sections 77 to 79 of the Constitution reproduces discriminatory rules relating to the participation of ethnic groups in this institution (arts. 2 and 5).

The Committee notes the information provided by the delegation that the debate over this issue is not closed and recommends that the State party adopt necessary measures to ensure the participation of all ethnic groups in the House of Chiefs on an equal basis.

60. The Committee reiterates its concern about the discriminatory character of the Chieftainship Act, as recognized by the High Court of Botswana in the case of *Kamanakao and others versus Attorney-General of Botswana*, of 23 November 2001. It notes with concern that the State party has not yet amended the Chieftainship Act and other laws where necessary, as ordered by the High Court (arts. 2 and 5).

The Committee reiterates its recommendation to the State party that it amend the Chieftainship Act and other laws where necessary, in particular the Tribal Territories Act, in order to remove their discriminatory character against non-Tswana ethnic groups and in order to provide equal protection and treatment to all tribes.

61. The Committee notes with concern the discrepancy between the information provided by the State party that residents of the Central Kalahari Game Reserve have been consulted and have agreed to their relocation outside the Reserve, and persistent allegations that residents were forcibly removed, through, in particular, such measures as the termination of basic and essential services inside the Reserve, the dismantling of existing infrastructures, the confiscation of livestock, harassment and ill-treatment of some residents by police and wildlife officers, as well as the prohibition of hunting and restrictions on freedom of movement inside the Reserve (arts. 2 and 5).

The Committee reiterates its recommendation to the State party that it resume negotiations with the residents of the Reserve, including those who have been relocated, as well as non-governmental organizations, with a view to finding a solution acceptable to all. The Committee, while welcoming the delegation's statement that there is no legal impediment to such process, recommends that a rights-based approach be adopted during the negotiations. To that end, the State party should, in particular, (a) pay particular attention to the close cultural ties that bind the San/Basarwa to their ancestral land; (b) protect the economic activities of the San/Basarwa that are an essential element of their culture, such as hunting and gathering practices, whether conducted by traditional or modern means; (c) study all possible alternatives to relocation; and (d) seek the prior free and informed consent of the persons and groups concerned.

62. The Committee expresses concern about the repeal of section 14 (3) (c) of the Constitution, which may impact on the ongoing court case brought by some residents of the Central Kalahari Game Reserve against the Government to challenge their relocation from the Reserve. The Committee notes with concern the State party's position that there was no point in maintaining this provision since the residents of the Reserve had been persuaded to be relocated (arts. 2 and 5).

The Committee recommends the State party to refrain from taking action that would prejudge the results of the ongoing court case. In that context, the Committee draws the attention of the State party to the fact that special measures for the advancement of disadvantaged ethnic groups, such as section 14 (3) (c) of the Constitution, are fully compatible with the letter and spirit of the Convention (arts. 1, para. 4, and 2, para. 2).

63. The Committee is concerned by the reported difficulties experienced by poor people, many of whom belong to San/Basarwa groups and other non-Tswana tribes, in accessing common law courts, due in particular to high fees, the absence of legal aid in most cases, as well as difficulties in accessing adequate interpretation services (art. 5).

The Committee recommends to the State party that it provide adequate legal aid and interpretation services, especially to persons belonging to the most disadvantaged ethnic groups, to ensure their full access to justice. In that context, the Committee draws the attention of the State party to its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

64. The Committee, while welcoming the State party's willingness to provide primary education in the main mother tongues of non-Tswana tribes, notes with concern the difficulties of many children belonging to these tribes to benefit from the educational curricula on account of linguistic barriers (arts. 5 and 7).

The Committee recommends that the State party implement its above policy, in particular in regions inhabited traditionally or in substantial numbers by persons belonging to non-Tswana tribes. The Committee also recommends that the State party consult with the concerned tribes in this regard.

65. The Committee is concerned by information according to which the school curricula do not include reference to the history, culture and traditions of non-Tswana ethnic groups (arts. 5 and 7).

The State party is requested to provide information, in its next periodic report, about measures adopted in the field of education aimed at encouraging knowledge of the history, culture and traditions of all tribes.

66. The Committee notes with concern that the decrees by the President of Botswana declaring a non-citizen as a "prohibited migrant", cannot be effectively appealed before a judicial body, as demonstrated in the decision of the Court of Appeal in the case of *Kenneth Good* (art. 5).

The Committee recommends to the State party that any person declared as a "prohibited migrant" be granted an effective remedy before a judicial body.

67. The Committee is concerned that in practice, asylum-seekers are automatically detained in prison-like conditions until their status is determined, a process which in some cases can last up to three to four years, and that they cannot appeal the decision denying them refugee status before a judicial body (art. 5).

The Committee recommends that asylum-seekers be detained only when necessary, for a limited period of time, under other regulations than the Prisons Act and in accordance with UNHCR guidelines. The Committee also recommends to the State party that it recognize the right of asylum-seekers to appeal the decision denying them refugee status before a judicial body.

68. The Committee notes with concern that refugees have access neither to the Anti Retroviral (ARV) Therapy Programme nor the Prevention of Mother-to-Child Transmission of HIV Programme (arts. 2 and 5).

The Committee recommends to the State party that it respect the right of refugees to an adequate standard of health by, inter alia, refraining from, denying or limiting their access to preventive, curative and palliative health services, and that it grant access of refugees to the Anti Retroviral (ARV) Therapy Programme and the Prevention of Mother-to-Child Transmission of HIV Programme.

69. The Committee is concerned by information according to which there is a growing hostility against undocumented immigrants in Botswana, in particular Zimbabweans, and that some undocumented immigrants have been ill-treated by police officers. It further regrets that insufficient information was provided by the State party on the inquiries made into the allegations of such ill-treatment by police officers (arts. 4, 5 and 6).

The Committee draws the attention of the State party to its general recommendation 30 (2004) on non-citizens. It recommends that the State party ensure that its competent authorities proceed to a prompt and impartial investigation into complaints of ill-treatment and in cases in which there are reasonable grounds to believe that ill-treatment has been committed by State agents, in particular when such acts seem to have been racially motivated. The State party

is invited to provide the Committee with detailed information on the results of such investigations. The Committee also recommends that the State party increase its efforts to provide adequate training in the field of human rights, including on the prohibition of racial discrimination, to its law enforcement personnel.

70. The Committee notes that the State party has not yet established an independent institution with the mandate to monitor and promote human rights, including on issues relating to the prohibition of racial discrimination and the promotion of tolerance amongst ethnic groups (arts. 2, 6 and 7).

The Committee invites the State party to consider establishing an independent national human rights institution, in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (General Assembly resolution 48/134).

71. The Committee recommends to the State party that it invite the Special Rapporteur of the Commission on Human Rights on the situation of human rights and fundamental freedoms of indigenous peoples and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, for a visit on its territory.

72. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

73. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and recommends that it consider the possibility of doing so.

74. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

75. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized, in the official languages and in the main minority languages.

76. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 60, 61, 64 and 68 above, within one year of the adoption of the present conclusions.

77. The Committee recommends to the State party that it submit its seventeenth and eighteenth periodic reports in a single document on 22 March 2009.

EL SALVADOR

78. The Committee considered the ninth to thirteenth periodic reports of El Salvador, which were due on 30 December 1996, 1998, 2000, 2002 and 2004, respectively, submitted as one document (CERD/C/471/Add.1), at its 1741st and 1742nd meetings (CERD/C/SR.1741 and 1742), held on 27 and 28 February 2006. At its 1757th and 1758th meetings (CERD/C/SR.1757 and 1758), held on 9 and 10 March 2006, it adopted the following concluding observations.

A. Introduction

79. The Committee welcomes the State party's periodic report, although it regrets that the Office of the Human Rights Procurator and the human rights non-governmental organizations did not participate in its preparation. The Committee expresses appreciation for the additional information supplied orally by the delegation, as well as its detailed replies to the many questions addressed to it.

B. Positive aspects

80. The Committee notes with satisfaction the beginnings of a change of perspective on indigenous issues in the State party, displayed in the establishment of such agencies as the Multisectoral Technical Committee for Indigenous Peoples, set up in 2001, and the Indigenous Affairs Unit attached to the National Council for Culture and the Arts (CONCULTURA).

81. The Committee welcomes the study entitled *Profile of the Indigenous Peoples*, prepared with the support of the World Bank, which, as the State party indicated, will serve as a basis for the formulation of government policy in this area.

82. The Committee notes with satisfaction article 62, paragraph 2, of the State party's Constitution, which provides that the indigenous languages spoken in El Salvador shall be preserved, disseminated and respected. The Committee also takes note of the project for the revitalization of the Nahuat language, and the fact that the Universal Declaration of Human Rights has been translated into Nahuat and Pipil.

83. The Committee notes with satisfaction that in 2003 the State party ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

C. Concerns and recommendations

84. The Committee notes once again the discrepancy between the assessment made by the State party, according to which society in El Salvador is ethnically homogeneous, and reliable reports indicating that indigenous peoples such as the Nahua-Pipil, the Lencas and the Cacaotera live in the country. The Committee points out that information on the composition of the population is needed to assess the implementation of the Convention and monitor policies affecting minorities and indigenous peoples.

The Committee draws the State party's attention to its general recommendation 4 (1973), as well as paragraph 8 of its guidelines for the submission of reports, and again requests the State party to supply disaggregated statistical information on the ethnic composition of the population of El Salvador in its next periodic report.

85. The Committee notes that the State party's domestic legislation confines itself to proclaiming the principle of non-discrimination and does not contain any specific reference to all the elements set out in article 1 of the Convention.

The Committee recommends that the State party should incorporate in its domestic legislation a definition of racial discrimination which includes all the elements set out in article 1 of the Convention.

86. The Committee remains concerned at assertions by the State party that there is no racial discrimination in El Salvador, since, according to the State party, the country does not have different racial groups, and that it has therefore not been necessary to adopt special practical social, economic and cultural measures in order to combat the effects of such discrimination.

Considering that no country is free of racial discrimination, the Committee reminds the State party that, under the Convention, it has an obligation to adopt positive legislative, judicial, administrative and other measures to give effect to its provisions, even in the claimed absence of racial discrimination. Such measures should also be directed towards preventing acts of discrimination. The Committee also recommends that the State party should consider granting legal recognition to the indigenous peoples (art. 2).

87. The Committee notes that the State party indicates that it has not ratified International Labour Organization (ILO) Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, on the grounds that some of its provisions conflict with El Salvador's domestic legislation.

The Committee urges the State party to take the necessary legislative steps to enable it to ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (art. 2, para. 2).

88. The Committee notes with concern the vulnerability of the indigenous peoples in respect of enjoyment of their economic, social and cultural rights, particularly as regards land ownership and access to drinking water.

The Committee encourages the State party to step up its efforts to improve the enjoyment of economic, social and cultural rights by the indigenous peoples, and especially to take steps to guarantee them land ownership and access to drinking water. The Committee invites the State party to take account of its general recommendation 23, on the rights of indigenous peoples (art. 5).

89. The Committee notes with concern the precarious situation of migrant workers originating principally from Guatemala, Honduras and Nicaragua, especially as regards women and children, who, for fear of deportation, fall victim to labour exploitation and ill-treatment in public schools.

Bearing in mind general recommendation 30 on non-citizens, the Committee recommends that the State party should ensure the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It encourages the State party to implement the agreements concluded with the Government of Nicaragua to regularize the situation of Nicaraguan migrant workers in El Salvador and invites it to submit information on progress made in this area (art. 5 (e) (i) and (v)).

90. The Committee notes with concern the low level of indigenous participation in government, in the management of public affairs at all levels and in the public service in El Salvador.

The Committee recommends that the State party should ensure that indigenous people participate in government and the management of public affairs at all levels, and enjoy equal access to the public service (art. 5 (c)).

91. The Committee notes with concern that the indigenous peoples have no access to their places of worship in the same way as followers of other religions.

The Committee encourages the State party to take the necessary steps to facilitate unrestricted access by indigenous people to pre-Hispanic centres to hold their religious ceremonies (art. 5 (vii)).

92. The Committee notes that, according to the State party, it is difficult to identify indigenous people, since they sometimes prefer not to identify themselves as such. It also notes that, according to some reports, this is due in large part to the events of 1932 and 1983, when large numbers of indigenous people were murdered. The Committee is seriously concerned that the persons responsible for those acts have not been identified, tried and punished.

The Committee urges the State party to take account of the recommendations made by the Human Rights Committee in its concluding observations on El Salvador (2003), to the effect that the General Amnesty Act should be amended to make it compatible with international human rights instruments. The Committee also encourages the State party to put into effect the recommendations made by the Inter-American Commission on Human Rights and adopt a programme of reparation and where possible material compensation for the victims, thus creating a climate of trust that will enable the indigenous people to assume their identity without fear (art. 6).

93. The Committee notes with concern the difficulties facing indigenous groups in securing access to justice owing to the high cost of judicial procedures and the lack of judicial services in remote areas.

The Committee invites the State party to take all appropriate measures to rectify this situation, including possible exemption for the indigenous peoples from payment of legal fees, taking into consideration the provisions of its general recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, especially paragraphs 6-9 of the recommendation (art. 6).

94. The Committee strongly recommends that the State party should ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee draws attention to General Assembly resolution 57/194 of 18 December 2002, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal was made by the General Assembly in its resolution 58/160 of 22 December 2003.

95. The Committee urges the State party to make the declaration provided for in article 14 of the Convention, thus recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals (art. 14).

96. The Committee requests the State party, when preparing its next periodic report, to consult civil-society organizations that are engaged in combating racial discrimination.

97. The Committee recommends that the State party should take account of the relevant parts of the Durban Declaration and Programme of Action when incorporating the Convention, particularly articles 2-7, into its domestic law. It also recommends that, in its next periodic report, the State party should provide information on measures that it has taken to give effect to the Durban Declaration and Programme of Action at the national level, particularly the preparation and implementation of the national plan of action.

98. The Committee recommends that the reports of the State party should be made public as soon as they are submitted and that the Committee's observations thereon should also be published, including in indigenous languages.

99. In pursuance of article 9, paragraph 1, of the Convention, and rule 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of the implementation of the Committee's recommendations contained in paragraphs 87, 89 and 92 within one year of the adoption of the present conclusions.

100. The Committee recommends that the State party should submit its fourteenth and fifteenth reports, due on 30 December 2008, as a single document, providing updated information on the issues raised during the consideration of the present reports, as well as all the matters raised in the present concluding observations.

GUATEMALA

101. The Committee considered the eighth to eleventh periodic reports of Guatemala, due respectively on 17 February 1998, 2000, 2002 and 2004 and submitted as one document (CERD/C/469/Add.1), at its 1739th and 1740th meetings (CERD/C/SR.1739 and 1740), held on 24 and 27 February 2006. At its 1756th and 1757th meetings, held on 9 March 2006, the Committee adopted the following concluding observations.

A. Introduction

102. The Committee welcomes the report submitted by the State party and expresses its satisfaction at the resumption of a constructive dialogue with Guatemala. While the Committee appreciates that the delegation was composed of members of the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA), it notes that it did not include representatives of the State party's Ministries.

103. The Committee, noting that it received the report after a delay of seven years, invites the State party to respect the timetable set by the Committee for the submission of its future reports.

B. Positive aspects

104. The Committee welcomes the establishment of the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA), and the Office for the Defence of Indigenous Women's Rights within the Presidential Human Rights Commission.

105. The Committee welcomes the promulgation of the Framework Law concerning the Peace Agreements by which the Peace Agreements, and in particular the Agreement on Identity and Rights of Indigenous Peoples, become binding on the State.

106. The Committee welcomes the declaration by the delegation that it is the intention of the Supreme Court of Justice and the institutional policy of the judiciary to recognize the indigenous legal system.

107. The Committee welcomes the promulgation of the Mayan Language Act and of legislation with respect to the wearing of regional indigenous dress in schools.

108. The Committee welcomes the reform of chapter IV of the Municipal Code, particularly the recognition given to traditional indigenous authorities (*alcaldías indígenas*) for the first time as regular municipal authorities, in national legislation and the commitment by the State to promote and respect indigenous people's own forms of political and administrative organization.

109. The Committee welcomes Government Agreement No. 22-04, which provides for intercultural bilingual education as part of the national education system as well as measures for its practical implementation.

110. The Committee notes with interest the follow-up to the institutionalization of B'eleje' B'atz Day (women's day in the Mayan calendar).

C. Subjects of concern and recommendations

111. The Committee is concerned that the statistics in the State party's report on the country's indigenous peoples are incomplete and that the State party does not keep statistics relating to the population of African descent. The Committee recalls that such information is necessary to assess how the Convention is implemented in respect of these groups.

The Committee draws the attention of the State party to its general recommendation 4 and to paragraph 8 of its guidelines regarding the submission of reports, and recommends to the State party that it include in its next periodic report updated disaggregated statistics on indigenous peoples and persons of African descent so that their situation can be more accurately assessed.

112. The Committee is deeply concerned at the extent to which racism and racial discrimination against the Maya, Xinca and Garifuna peoples is entrenched within the territory of the State party and at the inadequacy of public policies to eliminate racial discrimination (art. 2, para. 1, and art. 2, para. 2).

The Committee urges the State party to adopt the proposed policy entitled "Towards harmonious intercultural coexistence", which is intended to eliminate racial discrimination. It likewise recommends the State party to undertake special measures as provided for in article 2.2 of the Convention in favour of indigenous peoples and persons of African descent, who have historically been subjected to discrimination. The Committee also recommends that coordination be intensified between the various bodies involved in combating racial discrimination, such as the Office for the Defence of Indigenous Women's Rights, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala and the Ministry of Education.

113. While the Committee recognizes that the classification of discrimination as an offence under article 202 bis of the Criminal Code constitutes legal progress, it regrets that there is no domestic legislation that specifically prohibits and provides sanctions for racial discrimination (art. 4 (a)).

The Committee recommends that the State party adopt specific legislation classifying as a punishable act any dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination, and violent acts directed against indigenous peoples and persons of African descent in the State party.

114. While the Committee notes the progress that has been made in preventing racial discrimination in the administration of justice in respect of indigenous peoples, it reiterates its concern at the problems experienced by indigenous peoples in gaining access to the justice system, particularly because the indigenous legal system is not recognized and applied and because of the lack of interpreters and bilingual counsel available for court proceedings (art. 5 (a)).

The Committee reminds the State party of its general recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system (para. 5 (e)), which calls on the State party to ensure respect for, and recognition of the traditional systems of justice of indigenous peoples, in conformity with international human rights law. The Committee also recommends that the State party guarantee the right of indigenous peoples to the use of interpreters and bilingual counsel in court proceedings.

115. The Committee is concerned at violence, including domestic violence against indigenous women (art. 5 (b)).

Bearing in mind its general recommendation 25, the Committee recommends that the State party guarantee indigenous women access to the justice system. Furthermore, it recommends that the State party adopt the bill classifying sexual harassment as an offence, and that the commission of such an offence against an indigenous woman shall constitute an aggravating circumstance.

116. The Committee notes with concern the low level of participation, especially by indigenous women, in political life and in particular the lack of representation in Congress of the Xinca and Garifuna peoples. The Committee is likewise concerned by the absence of any specific reference to indigenous political participation in the Elections and Political Parties Act (art. 5 (c)).

The Committee, bearing in mind paragraph 4 (d) of its general recommendation 23, recommends that the State party redouble its efforts to ensure the full participation of indigenous peoples, especially indigenous women, in public affairs and that it take effective measures to ensure that all indigenous peoples, particularly the Xinca and Garifuna, participate at all levels. It also urges that the Elections and Political Parties Act be amended with a view to promoting the political participation of all indigenous peoples.

117. The Committee is highly concerned at indigenous peoples' lack of access to land, the lack of respect shown for their traditional lands, such as community forests, and the problems in relation to the restitution of lands to indigenous peoples displaced as a result of armed conflict or economic development plans (art. 5 (d) (v)).

Bearing in mind its general recommendation 23 on the rights of indigenous peoples, in particular paragraph 5 thereof, the Committee calls upon the State party to take steps to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands and territories. In cases where they have been deprived of their lands and territories traditionally owned, or such lands and territories have been otherwise used without their free and informed consent, the Committee recommends that the State party take steps to return those lands and territories. The Com iittee also urges it to ensure the effective implementation of the national land register law so that indigenous community lands can be identified and demarcated.

118. The Committee is concerned by reports of obstructions to the use of traditional sacred sites by indigenous peoples and conflicts arising from these tensions being handled by judicial officers as criminal matters. It has also been reported that a Commission examining a constitutional provision on sacred sites has been discontinued (art. 5 (d) (vi)).

The Committee requests the State party to examine the possibility of an alternative to criminal proceedings in handling these conflicts and urges it to ensure unobstructed enjoyment of this cultural right of the indigenous peoples.

119. The Committee notes with concern that mining licences have been granted by the Ministry of Energy and Mines to concession enterprises and regrets that indigenous peoples were not consulted or informed that the permission to exploit the subsoil of their territory had been awarded to such enterprises. The Committee likewise expresses its concern at the draft legislation on consultative procedures which, if adopted, would infringe indigenous peoples' right to participate in decisions affecting them (art. 5 (d) (v)).

The Committee recommends that when taking decisions having a direct bearing on the rights and interests of indigenous peoples the State party endeavour to obtain their informed consent, as stipulated in paragraph 4 (d) of its general recommendation 23. The Committee also recommends that before adopting the draft legislation on consultative procedures, the State party include a clause referring to the right of indigenous peoples to be consulted whenever legislative or administrative measures are contemplated that may affect them with a view to securing their consent to such measures.

120. The Committee is concerned by the high illiteracy rate that exists within the indigenous population, especially in rural areas, where 65 per cent of indigenous women are illiterate. The Committee is also concerned at the low primary school attendance among the indigenous population, especially indigenous young women and girls (art. 5 (e) (v)).

The Committee urges the State party to take steps in the short and medium terms to implement measures to reduce illiteracy, especially in rural areas and among women and girls. The Committee recommends that the State party consider increasing the number of bilingual schools, particularly in rural areas. In this connection the Committee recommends that the State party pursue educational reform through culturally relevant curricula, bearing in mind the provisions of the Agreement on Identity and Rights of Indigenous Peoples.

121. While the Committee welcomes the information provided on the structure, composition and competence of the Ombudsman for Indigenous Peoples of the Office of the Human Rights Procurator (Defensoria de los Pueblos Indigenas de la Procuraduria de los Derechos Humanos), it regrets that no information has been provided on the results of the cases filed before this body (art. 6).

The Committee recommends that the State party provide information on the results from the 28 complaints of racial discrimination that have been submitted including whether the victims have received due compensation.

122. While the Committee welcomes the information provided by the delegation on statistics relating to cases brought before the Office of the Human Rights Prosecutor (Fiscalia de Derechos Humanos), which investigates offences involving discrimination and racism, it nevertheless notes that of the 79 cases brought, only 1 resulted in conviction and sentence (art. 6).

The Committee requests the State party to include in its next periodic report explanations as to why a sentence was handed down in only 1 out of 79 cases. The Committee would also appreciate statistical information on the complaints brought before the Office of the Human Rights Prosecutor, the proceedings initiated and the outcomes of cases involving racial or ethnic discrimination as well as specific examples of such cases. The Committee would also like to know whether the victims received just and adequate reparation for any material and moral damage suffered as a result of racial discrimination.

123. The Committee is greatly concerned by attitudes of contempt and rejection displayed by the communication media towards indigenous peoples. The Committee also wishes to express its concern at the fact that community radio stations have a broadcasting range of less than 1 kilometre, thus restricting the enjoyment of this medium by indigenous communities (art. 7).

The Committee recommends that the State party take appropriate measures to combat racial prejudice that can lead to racial discrimination in the media. It also recommends that a multicultural approach be adopted in the local, community and free communication media, in terms of their content and supervisory structures, and ensure in particular the proper functioning of community radio stations so that they reach the largest possible number of indigenous communities.

124. The Committee recommends that the State party accelerate adoption of the bill authorizing the Government to recognize the competence of the Committee by means of the declaration provided for in article 14 of the Convention.

125. The Committee recommends that the State party take account of the relevant parts of the Durban Declaration and Programme of Action when incorporating the Convention, particularly articles 2 to 7, into its domestic law. It also recommends that, in its next periodic report, the State party provide information on measures it has taken to give effect to the Durban Declaration and Programme of Action at the national level, particularly the preparation and implementation of the national plan of action.

126. The Committee recommends that the reports of the State party be made public as soon as they are submitted, and that the observations of the Committee in this regard likewise be published and disseminated.

127. In accordance with article 9, paragraph 1, of the Convention, and rule 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of the implementation of the Committee's recommendations contained in paragraphs 113, 115 and 119 within one year of the adoption of the present conclusions.

128. The Committee recommends that the State party submit its twelfth and thirteenth periodic reports in a single report, due on 17 February 2008.

GUYANA

129. The Committee considered the initial to fourteenth periodic reports (the "report") of Guyana due from 1978 to 2004, respectively, and submitted in one document (CERD/C/472/Add.1), at its 1747th and 1748th meetings (CERD/C/SR.1747 and 1748), held on 2 and 3 March 2006. At its 1758th and 1759th meetings (CERD/C/SR.1758 and 1759), held on 10 March 2006, it adopted the following concluding observations.

A. Introduction

130. The Committee welcomes the comprehensive report and additional written information submitted by Guyana and the opportunity thus offered to open a constructive dialogue with the State party. It is encouraged by the attendance of a high-level delegation and appreciates the detailed and frank answers the delegation gave in response to the Committee's questions.

131. The Committee notes that the report was more than 26 years overdue when submitted and that the State party had availed itself of technical assistance provided by the Office of the High Commissioner for Human Rights. It invites the State party to make every effort to respect the deadlines for the submission of its future reports.

B. Factors and difficulties impeding the implementation of the Convention

132. The Committee notes that the historic ethnic polarization of the society and of the main political parties of Guyana has reinforced prejudice and intolerance in the State party.

C. Positive aspects

133. The Committee notes with satisfaction that the State party has ratified most of the core United Nations human rights treaties, and that the International Convention on the Elimination of all Forms of Racial Discrimination (the "Convention") can be directly applied in the State party's courts.

134. The Committee notes with appreciation the efforts made by the State party to make the public health system reach out to remote hinterland areas, through a system of health centres and health huts at the community level, incentives to medical doctors deployed to the hinterland areas, and a system in place to airlift patients to hospitals in emergency cases.

135. The Committee welcomes information on the high literacy rate of the Guyanese population, as well as the efforts undertaken by the State party to increase the number of secondary schools in the hinterland areas.

D. Concerns and Recommendations

136. The Committee is concerned about the lack of disaggregated statistical data on the number and economic situation of indigenous peoples in Guyana and about their equal enjoyment of the rights guaranteed in the Convention. In the absence of such statistical information, the Committee finds it difficult to assess the extent of racial and ethnic discrimination within the territory of the State party.

The Committee requests that the State party provide in its next periodic report statistical information on the economic situation of members of indigenous peoples and their communities, as well as on their enjoyment of the rights protected under article 5 of the Convention, disaggregated by, inter alia, gender, age, and rural/urban population.

137. The Committee is concerned that "national or ethnic origin" is not included among the prohibited grounds of discrimination in article 40 (1) of the Constitution of Guyana and that the list of fundamental rights and freedoms contained in that article does not cover all civil, cultural, economic, political and social rights protected under article 5 of the Convention (arts. 1 and 5).

The Committee recommends that the State party take the necessary legislative measures to include "national or ethnic origin" among the prohibited grounds of discrimination in article 40 (1) of the Constitution of Guyana and that the prohibition of racial discrimination in that article applies with respect to the enjoyment of all rights and freedoms protected under article 5 of the Convention.

138. The Committee notes that the Amerindian Act of 2006 systematically refers to the indigenous peoples of Guyana as "Amerindians" (art. 2).

The Committee recommends that the State party, in consultation with all indigenous communities concerned, clarify whether "Amerindians" is the preferred term of these communities, that it consider the criteria laid down in article 1 of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, as well as in the Committee's general recommendation 8,[4] in defining indigenous peoples, and that it recognize the specific rights and entitlements accorded to indigenous peoples under international law.

139. While noting with favour that the State party has adopted several measures aimed at improving the situation of indigenous people in fields such as employment, housing and education, the Committee is concerned about the absence of a national strategy or plan of action which systematically address any inequalities that members of indigenous communities face in the enjoyment of their rights (art. 2).

The Committee recommends that the State party adopt a comprehensive national strategy or plan of action providing for special measures, in accordance with article 2 (2) of the Convention, for the purpose of guaranteeing indigenous people the full and equal enjoyment of human rights and fundamental freedoms, and that it allocate sufficient funds for that purpose.

140. The Committee notes the lack of information on the practical application of criminal and other legislation aimed at eliminating racial discrimination, such as the Racial Hostility Act (1997), the Prevention of Discrimination Act (1997), or article 149 of the Constitution of Guyana (arts. 2 (1) (d), 4 and 6).

The Committee requests the State party to ensure and monitor the effective implementation of all legal provisions aimed at eliminating racial discrimination, and to provide in its next report updated information concerning the application by the Guyanese courts of criminal law and other legal provisions punishing and/or

prohibiting acts of racial discrimination. Such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any restitution or other remedies provided to victims of such acts.

141. The Committee is concerned about the absence of statistical data on the representation of ethnic minorities, including indigenous women, in public offices and government positions (art. 5 (c)).

The Committee urges the State party to ensure that all ethnic minorities have adequate opportunities to participate in the conduct of public affairs at all levels, including Parliament and the Government. Taking into account paragraph 8 above, the Committee particularly requests the State party to provide in its next periodic report updated statistical information, disaggregated by ethnic group, gender and rural/urban population, on the percentage, functions and seniority of minority representatives, including Afro-Guyanese and indigenous people, holding public offices and government positions.

142. While noting that the Constitutional Amendment Act of 2000 establishing the Ethnic Relations Commission does not require the representation of any particular ethnic group on the Commission, the Committee is nevertheless concerned about the absence of any indigenous representatives on that Commission (art. 5 (c)).

The Committee recommends that the State party ensure that the ethnic composition of the Ethnic Relations Commission be as inclusive as possible, and that the representatives of indigenous communities be consulted, and their informed consent sought, in any decision-making processes directly affecting their rights and interests, in accordance with the Committee's general recommendation 23.[5]

143. The Committee notes with deep concern that, under the Amerindian Act (2006), decisions taken by the Village Councils of indigenous communities concerning, inter alia, scientific research and large scale mining on their lands, as well as taxation, are subject to approval and/or gazetting by the competent Minister, and that indigenous communities without any land title ("untitled communities") are also not entitled to a Village Council (art. 5 (c)).

The Committee urges the State party to remove the discriminatory distinction between titled and untitled communities from the 2006 Amerindian Act and from any other legislation. In particular, it urges the State party to recognize and support the establishment of Village Councils or other appropriate institutions in all indigenous communities, vested with the powers necessary for the self-administration and the control of the use, management and conservation of traditional lands and resources.

144. The Committee is deeply concerned about the lack of legal recognition of the rights of ownership and possession of indigenous communities over the lands which they traditionally occupy and about the State party's practice of granting land titles excluding bodies of waters and subsoil resources to indigenous communities on the basis of numerical and other criteria not necessarily in accordance with the traditions of indigenous communities concerned, thereby depriving untitled and ineligible communities of rights to lands they traditionally occupy (art. 5 (d) (v)).

The Committee urges the State party to recognize and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy, including water and subsoil resources, and to safeguard their right to use lands not exclusively occupied by them, to which they have traditionally had access for their subsistence, in accordance with the Committee's general recommendation 23[6] and taking into account ILO Convention No. 169 on Indigenous and Tribal Peoples. It also urges the State party, in consultation with the indigenous communities concerned, (a) to demarcate or otherwise identify the lands which they traditionally occupy or use, (b) to establish adequate procedures, and to define clear and just criteria to resolve land claims by indigenous communities within the domestic judicial system while taking due account of relevant indigenous customary laws.

145. The Committee notes with concern the extensive exception to the protection of property in article 142 (2) (b) (i) of the Constitution of Guyana, authorizing the compulsory taking of the property of Amerindians without compensation "for the purpose of its care, protection and management or any right, title or interest held by any person in or over any lands situated in an Amerindian District, Area or Village established under the Amerindian Act for the purpose of effecting the termination or transfer thereof for the benefit of an Amerindian community". (art. 5 (d) (v) and 6).

The Committee recommends that the State party afford non-discriminatory protection to indigenous property, in particular to the rights of ownership and possession of indigenous communities over the lands which they traditionally occupy. It also recommends that the State party confine the taking of indigenous property to cases where this is strictly necessary, following consultation with the communities concerned, with a view to securing their informed consent, and to provide these communities with adequate compensation where property is compulsorily acquired by the State, as well as with an effective remedy to challenge any decision relating to the compulsory taking of their property.

146. While noting the State party's special recruitment measures for the Armed Forces and the police in favour of indigenous people and other applicants from the hinterland areas, the Committee remains concerned about the ethnic composition of the Armed Forces and the police of Guyana which are predominantly recruited from the Afro-Guyanese population (art. 5 (e) (i)).

The Committee encourages the State party to continue and intensify its efforts aimed at ensuring a balanced ethnic representation in the composition of its Armed Forces and police, i.e. by implementing the recommendations of the Disciplined Forces Commission charged to address existing imbalances, by extending its special recruitment policy to all ethnic groups that are underrepresented, in particular the Indo-Guyanese, and by providing incentives for members of underrepresented ethnic groups to join the forces.

147. The Committee is deeply concerned that, despite the State party's efforts mentioned in paragraph 6 above, the average life expectancy among indigenous peoples is low, and that they are reportedly disproportionately affected by malaria and environmental pollution, in particular mercury and bacterial contamination of rivers caused by mining activities in areas inhabited by indigenous peoples (art. 5 (e) (iv)).

The Committee urges the State party to ensure the availability of adequate medical treatment in hinterland areas, in particular those inhabited by indigenous peoples, by increasing the number of skilled doctors and of adequate health facilities in these areas, by intensifying the training of health personnel from indigenous communities, and by allocating sufficient funds to that effect. Furthermore, it recommends that the State party undertake environmental impact assessments and seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar operations which may threaten the environment in areas inhabited by these communities.

148. While noting with favour that the State party provides school uniforms to all indigenous children free of charge and that indigenous students are the only ethnic group for which special scholarship programmes exist, the Committee is nevertheless deeply concerned about the low secondary school and university attendance by indigenous children and students, as well as about the reported lack of qualified teachers, textbooks and classrooms at schools in areas predominantly inhabited by indigenous peoples (art. 5 (e) (v)).

The Committee urges the State party to ensure equal quality of teaching for, and increase school and university attendance by, indigenous children and adolescents and to that end, to the maximum of its available resources, intensify the training of, and provide incentives for, hinterland teachers, proceed with the construction of schools in hinterland areas, ensure the availability of culturally appropriate textbooks, including in indigenous languages, in schools with indigenous pupils, and further increase the outreach of scholarship programmes for indigenous pupils and students.

149. The Committee notes that only few complaints about acts of racial discrimination have been brought before the Ethnic Relations Commission and none before the courts which, according to the State party, can partly be attributed to the high standard of proof required in judicial proceedings and to the difficulties to secure witnesses in a small society such as the Guyanese society (art. 6).

The Committee recommends that the State party consider sharing the burden of proof in civil and administrative proceedings once the commission of an act of racial discrimination has been sufficiently substantiated by the complainant, and that it allocate sufficient funds to witness protection programmes in cases concerning acts of racial discrimination.

150. The Committee expresses its concern about the existing ethnic tensions in Guyana which constitute an impediment to intercultural recognition and the construction of an inclusive and politically pluralistic society (art. 7).

The Committee encourages the State party to provide education and to actively support programmes that foster intercultural dialogue, tolerance and understanding with respect to the culture and history of different ethnic groups within Guyana. The Committee further endorses the recommendation of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to establish a constitutional commission on intercultural dialogue.[7]

151. The Committee recommends that the State party consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

152. The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

153. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and recommends that it consider doing so.

154. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this regard, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

155. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized, including in indigenous languages.

156. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests that the State party inform it of its implementation of the recommendations contained in paragraphs 143, 144 and 147 above, within one year of the adoption of the present conclusions.

157. The Committee recommends to the State party that it submit its fifteenth and sixteenth periodic reports in a single report, due on 17 March 2008.

LITHUANIA

158. The Committee considered the second and third periodic reports of Lithuania, submitted in one document (CERD/C/461/Add.2), at its 1733rd and 1734th meetings (CERD/C/SR.1733 and 1734), held on 21 and 22 February 2006. At its 1753rd meeting (CERD/C/SR.1753), held on 7 March 2006, it adopted the following concluding observations.

A. Introduction

159. The Committee welcomes the report, which has substantial elements of self-criticism and was submitted by the State party in a timely fashion, as well as the continuation of an open and constructive dialogue with the State party. It also appreciates the attendance of a high-level delegation and the efforts it made to respond to the numerous questions posed by Committee members.

160. The Committee further welcomes the fact that, during the preparation of the State party's report, non-governmental organizations provided the State party with observations and comments.

B. Positive aspects

161. The Committee commends the amendment to the Law on Education which recognizes the right of everyone to education without discrimination and contains, inter alia, provisions regulating education in, and teaching of, languages of national minorities.

162. The Committee takes note with satisfaction of the statement made by the delegation that ratification of the UNESCO Convention against Discrimination in Education is currently under consideration and encourages the State party to proceed with such ratification.

163. The Committee welcomes the adoption of a new penal code criminalizing incitement to racial hatred as well as the adoption of a new law on equal opportunities which prohibits any direct or indirect discrimination on the grounds of age, sexual orientation, disability, race or ethnicity, religion or convictions.

164. The Committee welcomes the establishment and the work carried out by the Department of National Minorities and Lithuanians Living Abroad, the Human Rights Committee of the Seimas, the Office of the Seimas Ombudsman and the Ombudsman on Equal Opportunities.

165. The Committee welcomes the adoption of a Programme of Action for the Integration of National Minorities in Lithuanian Society (2005-2010) and encourages the State party to allocate sufficient funds for the adequate implementation of this programme.

C. Concerns and recommendations

166. The Committee notes with concern the lack of adequate data relating to the ethnic composition of the population. It further notes that this may constitute an obstacle to the assessment of progress towards the elimination of discrimination based on race, colour, descent, or national or ethnic origin.

The Committee requests the State party to provide in its next periodic report updated specific information on the ethnic composition of its population. The Committee also requests a clarification on the distinction, as envisaged in the new draft law amending the Law on National Minorities, between "ethnic" minorities or groups, and "national" minorities.

167. The Committee is concerned that the Convention has never been applied by the Courts, despite its direct applicability in domestic law (art. 2).

The Committee recommends that the relevant authorities provide, as soon as possible, adequate training to judges and lawyers to ensure that they are aware of the content and the direct applicability of the Convention in domestic law.

168. The Committee, while welcoming the existence of a number of advisory bodies dealing with human rights and specifically with the rights of national minorities, regrets that the State party has not yet envisaged establishing a National Human Rights Institution (art. 2).

The Committee encourages the State party to consider the establishment of an independent national human rights institution, in accordance with the Paris Principles relating to the status of national institutions (General Assembly resolution 48/134), which would, inter alia, contribute to monitoring and evaluating progress in the implementation of the Convention at the national and local levels.

169. The Committee remains concerned that racist and xenophobic incidents and discriminatory attitudes towards ethnic minorities are still encountered in the country, including expressions of racial hatred by politicians and the media (arts. 2 and 4).

The Committee encourages the State party to continue to combat prejudice and xenophobic stereotyping, especially in the media, and to fight prejudice and discriminatory attitudes. It reiterates its recommendation to the State party to comply with its obligation under article 4 (a) of the Convention to combat effectively such phenomena. In this context, the Committee recommends that the State party introduce in its criminal law a provision that makes committing an offence with a racist motivation or aim an aggravating circumstance allowing for a more severe punishment.

170. The Committee notes that very few cases of racial discrimination have been referred to the courts. According to some information, members of national and ethnic minorities who suffer discrimination do not complain to courts because they fear reprisals and lack confidence in the police and the judicial authorities, and because of the authorities' lack of impartiality and sensitivity to cases of racial discrimination (arts. 4 and 6).

The Committee recommends to the State party that it inform victims of racial discrimination of their rights, including remedies available to them, that it facilitate their access to justice and guarantee their right to just and adequate reparation. The State party should ensure that its competent authorities investigate promptly and impartially complaints of racial discrimination and cases in which there are reasonable grounds to believe that acts of racial discrimination have occurred.

171. The Committee is concerned by the new Law on the Legal Status of Aliens which restricts considerably the possibility for asylum-seekers to be granted refugee status and only provides them with humanitarian protection (art. 5).

The Committee draws the attention of the State party to its general recommendation 30 on non-citizens and recommends that it ensure that all persons entitled to refugee status under the Convention relating to the Status of Refugees be granted such status. It also recommends to the State party that it enhance the capacity of administrative courts to deal effectively with asylum appeals cases and to provide information thereon in its next periodic report, including statistical data. It also recommends to the State party to ensure that persons granted humanitarian protection have adequate access to social security and health-care services.

172. The Committee is concerned about the fact that asylum-seekers are automatically detained for security reasons (art. 5).

The Committee recommends to the State party that it ensure that asylum-seekers are only detained when it is absolutely necessary and in accordance with UNHCR guidelines, and that it resort to alternative measures to detention in all other cases.

173. The Committee notes that the State party has not provided adequate information about the gender-related dimensions of racial discrimination (art. 5).

The Committee draws the attention of the State party to its general recommendation 25 on gender-related dimensions of racial discrimination and recommends that it assess the extent of discrimination against women belonging to ethnic minorities and that it provide information on this issue in the next periodic report.

174. The Committee expresses concern about allegations of discriminatory behaviour of the police towards members of minority groups, in particular Roma, including acts of ill-treatment and violence (art. 5).

The Committee recommends that the State party establish an independent monitoring mechanism to carry out investigations into allegations of police misconduct and at the same time intensify its actions to halt this phenomenon, in particular through the provision of adequate human rights training to law enforcement personnel.

175. The Committee remains concerned about the persistence of discriminatory attitudes and hostility towards members of the Roma community throughout the country (art. 5).

The Committee, recalling its general recommendation 27 on discrimination against Roma, recommends that the State party continue to endeavour, through a genuine dialogue, to improve relations between Roma communities and non-Roma communities with a view to promoting tolerance and overcoming prejudices and negative stereotypes. The Committee also invites the State party to take more effectively into account the situation of Roma children and women in all programmes and projects planned and implemented and in all measures adopted.

176. The Committee continues to express concern at the marginalization of Roma children in the school system (art. 5).

The Committee recommends that the State party ensure the equal enjoyment of the right to education for Roma children. The Committee further recommends that the State party intensify its efforts to raise the level of achievement in schools for Roma children, to recruit additional school personnel from among members of Roma communities to provide for the possibility of bilingual or mother-tongue education.

177. While the Committee recognizes the efforts made in the field of employment - including the recent adoption of the new Labour Code as well as the new Law on Equal Opportunities which provide for enhancing the employment rate without any direct and indirect discrimination - it is alarmed by the very high rate of unemployment among members of the Roma community (art. 5).

The Committee recommends that legislation prohibiting discrimination in employment and all discriminatory practices in the labour market be fully implemented and that further measures be taken, in particular by focusing on professional training, to reduce unemployment among the Roma community.

178. While the Committee notes the reintroduction of "the Programme for the Integration of the Roma into Lithuanian Society", it reiterates its concern about the isolation of the Roma community in ghetto-like neighbourhoods and their critical situation in respect of housing conditions, especially in Vilnius, where most of the Roma community is concentrated (arts. 3 and 5).

In light of its general recommendation 27, the Committee recommends that the State party effectively implement policies and projects aimed at avoiding segregation of Roma communities in housing, that it involve Roma communities and associations as partners in housing construction, rehabilitation and maintenance projects, and that it dedicate sufficient funding to this aim. Furthermore, the Committee encourages the State party to take into account that for families, and particularly children, living in a proper environment is an essential prerequisite for access to education and employment on an equal footing.

179. The Committee is alarmed at the critical health situation of some Roma communities, which is largely a consequence of their poor living conditions (art. 5).

The Committee recommends that the State party continue to implement programmes and projects in the field of health for Roma, bearing in mind their disadvantaged situation resulting from extreme poverty and low levels of education. To this end, the Committee encourages the State party to take further measures to address the issues of drinking water supplies and sewage disposal systems in Roma settlements.

180. While it notes that the Constitutional Court has been seized of this matter, the Committee is concerned that article 18 (1) of the new Law on Citizenship, which provides that the acquisition of citizenship of another State results in the loss of Lithuanian citizenship, only applies to persons who are not of Lithuanian origin (art. 5).

The Committee, stressing that deprivation of citizenship on the basis of national or ethnic origin is a breach of the obligation to ensure non-discriminatory enjoyment of the right to nationality, urges the State party to refrain from adopting any policy that directly or indirectly leads to such deprivation. In light of its recommendation 30 on non-citizens, the Committee wishes to receive detailed information on the future decision of the Constitutional Court.

181. The Committee notes with concern that Lithuania is a country of transit for the trafficking of women and girls, in particular non-citizens, for the purpose of sexual exploitation (arts. 5 and 6).

The Committee recommends to the State party that it strengthen ongoing efforts to prevent and combat trafficking and provide support and assistance to victims, wherever possible in their own language. Furthermore, the Committee urges the State party to undertake prompt and impartial investigations with a view to prosecuting the perpetrators.

182. The Committee reiterates its recommendation to the State party that it should take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

183. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and reiterates its recommendation that it consider the possibility of doing so. It also recommends to the State party that it ratify Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

184. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

185. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized, in Lithuanian and in the main minority languages.

186. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 170, 174, 179 and 180 above, within one year of the adoption of the present conclusions.

187. The Committee recommends to the State party that it submit its fourth and fifth periodic reports in a single document on 9 January 2008.

MEXICO

188. The Committee considered the twelfth to fifteenth periodic reports of Mexico, which were due on 22 December 1998, 2000, 2002 and 2004, respectively, submitted as one document (CERD/C/473/Add.1), at its 1731st and 1732nd meetings (CERD/C/SR.1731 and 1732), held on 20 and 21 February 2006. At its 1752nd and 1753rd meetings (CERD/C/SR.1752 and 1753), held on 7 March 2006, it adopted the following concluding observations.

A. Introduction

189. The Committee welcomes the State party's periodic report and the fact that it was represented by a delegation made up of officials from a variety of State agencies involved in matters related to the implementation of the Convention. The Committee also welcomes the fact that the National Human Rights Commission took part in the preparation of the periodic report, as well as human rights non-governmental organizations. The Committee expresses appreciation to the delegation for its frank and detailed replies to the many questions addressed to it.

B. Positive aspects

190. The Committee welcomes the declaration made by the State party in 2002 under article 14 of the Convention recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals or groups of individuals.

191. The Committee welcomes the adoption of the new article 2 of the Constitution, stipulating that Mexico is a single, indivisible and multicultural nation originally based on its indigenous peoples.

192. The Committee welcomes the enactment of the Federal Act to Prevent and Eliminate Discrimination in 2002 and the establishment of the National Council for the Prevention of Discrimination, which began operations in 2004.

193. The Committee welcomes the enactment of the General Act on the Linguistic Rights of Indigenous Peoples in 2003 and the establishment of the Institute of Indigenous Languages.

194. The Committee welcomes the establishment of the National Commission for the Development of Indigenous Peoples in 2003.

195. The Committee welcomes the recognition of the jurisdiction of "indigenous judges" in certain States of Mexico.

196. The Committee takes note with satisfaction of the State party's ratification of the International Convention on the Protection of Migrant Workers and Members of Their Families in 2003.

197. The Committee takes note with satisfaction of the close cooperation between the Office of the High Commissioner for Human Rights in Mexico and the State party in efforts to combat racial discrimination, especially in relation to indigenous peoples.

C. Concerns and recommendations

198. The Committee expresses concern at the lack of statistics on communities of African descent in the State party's report. The Committee points out that information on the composition of the population is necessary for evaluating the implementation of the Convention and monitoring policies that affect minorities.

The Committee recommends that the State party should provide information on communities of African descent, which are numerically small and vulnerable and should enjoy all the guarantees of protection laid down in the Convention.

199. While the Committee takes note of the explanations supplied by the State party in relation to the constitutional reforms of 2001 as regards indigenous rights, it regrets that those reforms have not been followed through in practice. The Committee also regrets that the indigenous peoples were not consulted during the reform process (art. 2).

The Committee recommends that the State party should put into practice the principles set out in the constitutional reform in relation to indigenous matters in close cooperation with the indigenous peoples.

200. The Committee expresses concern at the failure to implement article 10 of the Law on Linguistic Rights of Indigenous Peoples under which indigenous persons are entitled to use interpreters in the administration of justice (art. 5 (a)).

The Committee, bearing in mind general recommendation 31 (section B, paragraph 5 (e)), recommends that the State party should guarantee the right of indigenous peoples to use interpreters and court-appointed defence counsel who are familiar with the language, culture and customs of the indigenous communities.

201. The Committee notes with concern that under article 2, section VII of the Constitution, the right of the indigenous peoples to elect their political representatives is limited to the municipal level (art. 5 (c)).

The Committee reminds the State party of article 5 (c) of the Convention, and recommends that it should guarantee in practice the right of the indigenous peoples to participate in government and in the management of public affairs at every level.

202. The Committee reiterates its concern that indigenous communities have no legal security with regard to land tenure, particularly in the Huasteca region, where the indigenous communities' struggle for recognition of their ownership of land and the granting of titles has resulted in dozens of deaths over the past three decades (art. 5 (d) (v)).

The Committee reminds the State party of its general recommendation 23 on the rights of indigenous peoples, in particular paragraph 5 which calls on State parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their lands and territories. The Committee also recommends that the State party should ensure the effective implementation of the programme for dealing with hot spots, which is designed to settle conflicts caused mainly by disputes over land ownership. The Committee requests the State party to supply information in its next periodic report on progress made in this area.

203. The Committee remains concerned at the situation of migrant workers who originate principally from indigenous communities in Guatemala, Honduras and Nicaragua, particularly as regards women, who are victims of such abuses as long working days, lack of health insurance, physical and verbal ill-treatment, sexual harassment, and threats that they will be handed over to the migration authorities because they are undocumented (art. 5 (e) (i)).

Bearing in mind general recommendation 30 on non-citizens, the Committee recommends that the State party should ensure the proper implementation in practice of programmes for migrant workers, such as the Programme of Documentation for the Legal and Migratory Security of Guatemalan Farm Workers, the Regularization of Migration Programme, the Programme for upgrading migrant holding centres, the Plan of Action for Cooperation in Migratory Matters and Consular Protection with El Salvador and Honduras and the Agricultural day labourers' programme. The Committee calls on the State party to include in its next periodic report information on progress made in relation to the situation of migrant workers in the State party.

204. While the Committee welcomes the criminalization of forced sterilization under article 67 of the General Health Law, it reiterates its concern at the reproductive health situation of indigenous men and women in Chiapas, Guerrero and Oaxaca as far as the alleged practice of forced sterilization is concerned (art. 5 (e) (iv)).

The Committee urges the State party to take all necessary steps to put an end to practices of forced sterilization, and to impartially investigate, try and punish the perpetrators of such practices. The State party should also ensure that fair and effective remedies are available to the victims, including those for obtaining compensation.

205. The Committee is concerned at the racial discrimination which exists against indigenous peoples in the media, including through projection of stereotyped and demeaning representations of indigenous peoples (arts. 4 and 7).

The Committee recommends that the State party should take appropriate steps to combat racial prejudice leading to racial discrimination in the media, both public and private. The Committee also recommends that in the area of information the State party should foster understanding, tolerance and friendship among the various racial groups in the State party, including the adoption of a code of media/journalistic ethics in this field.

206. The Committee recommends that the State party should take account of the relevant parts of the Durban Declaration and Programme of Action when incorporating the Convention, particularly articles 2 to 7, into its domestic law. It also recommends that, in its next periodic report, the State party should provide information on measures it has taken to give effect to the Durban Declaration and Programme of Action at the national level, particularly the preparation and implementation of the national plan of action.

207. The Committee recommends that the reports of the State party should be made public as soon as they are submitted, and that the observations of the Committee in this regard should also be published in the indigenous languages of the State party.

208. In pursuance of article 9, paragraph 1, of the Convention, and rule 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of the implementation of the Committee's recommendations contained in paragraphs 198, 199 and 204 within one year of the adoption of the present conclusions.

209. The Committee recommends that the State party should submit its sixteenth and seventeenth reports in a single report, due on 22 March 2008.

UZBEKISTAN

210. The Committee considered the third to fifth periodic reports of Uzbekistan, due respectively from 1996 to 2004, submitted as one document (CERD/C/463/Add.2), at its 1743rd and 1744th meetings (CERD/C/SR.1743 and 1744), held on 28 February and 1 March 2006. At its 1754th meeting (CERD/C/SR.1754), held on 8 March 2006, it adopted the following concluding observations.[8]

A. Introduction

211. The Committee welcomes the comprehensive report submitted in due time by the State party, which was drafted in accordance with the guidelines for the preparation of reports, and with contributions from some NGOs. The continuation of an open and constructive dialogue with the State party is equally welcomed. More information should be provided, however, on the practical implementation of the Convention.

B. Positive aspects

212. The Committee welcomes the wide range of information provided by the delegation on many aspects, and especially takes note that following a reform of the institution, the Parliament's Ombudsman (with a mandate to receive individual complaints), reports to both Chambers of Parliament and has gained in independence.

213. The Committee notes with appreciation that the law guarantees the freedom of citizens to choose their language of instruction, and that there are a number of primary and secondary public schools where education takes place in minority languages.

214. The Committee takes note with satisfaction of the statement made by the delegation that the issue of accession to the 1951 Convention relating to the Status of Refugees and its Optional Protocol (1967) is currently under examination, and encourages the State party to accede to these instruments without delay.

215. The Committee notes with interest the State party's practice of establishing National Plans of Action in response to treaty bodies' recommendations, and the information provided by the delegation that a similar Plan would be adopted in respect to the present concluding observations.

216. The Committee welcomes the adoption of new legislation on NGOs which has resulted in the registration of many new NGOs, including those which represent various ethnic groups.

217. The Committee welcomes the information that human rights are included as a subject of instruction in educational curricula.

C. Concerns and recommendations

218. The Committee reiterates its concern about the absence of a definition of racial discrimination in domestic law, even if the provisions of the Convention may be directly invoked before national courts.

The Committee is of the view that the elaboration of specific legislation on racial discrimination, including all elements provided in article 1 of the Convention, is an indispensable tool for effectively combating racial discrimination.

219. The Committee is concerned that the last census of the population in the State party dates back to 1989, which may affect the accuracy of the data used in the report.

The State party is recommended to provide detailed and updated disaggregated data on the ethnic composition of its population in its next report.

220. The Committee is concerned about the lack of comprehensive information on the acquisition, in practice, of permanent residence permits or citizenship in the State party.

The State party is invited to provide in its next periodic report information on the number of persons that were granted Uzbek citizenship, and residence permits, disaggregated by ethnic origin.

221. The Committee requests that the State party clarify the situation concerning the independence of judges, particularly as regards litigation involving non-Uzbek ethnic groups, in view of the information provided by the delegation that judges to higher courts are appointed by the Higher Chamber of Parliament, and that ordinary judges are designated by the President, on the recommendation of the High Qualification Commission.

The Committee recommends that the State party examine whether current practice on judicial appointments fully ensures the independence and impartiality of the judiciary.

222. The Committee has noted the information provided by the State party that according to the law, interpretation is systematically provided in court to members of minorities (free of charge in criminal and civil cases). It regrets, however, that no information on the application of this provision in practice was made available (art. 5, para. (a)).

The Committee invites the State party to provide information, including statistical data, on the number of trials where interpretation was provided free of charge, disaggregated by language.

223. The Committee is concerned about the absence of specific legislation on refugees, in particular the lack of legal safeguards against forced removal of individuals to a country where their life/health may be at risk (art. 5, para. (b)).

The Committee invites the State party to elaborate a legislative framework for the protection of refugees in accordance with international standards, to pursue its cooperation with UNHCR and to protect persons who have sought refuge in Uzbekistan. The Committee also recommends the State party, in accordance with

article 5 (b), to ensure that no person will be forcibly returned to a country where there are substantial grounds for believing that his/her life or physical integrity may be put at risk. In this regard, the State party is invited to establish a mechanism to permit appeals against decisions to remove aliens, with a suspensive effect on removals, pending examination of appeals.

224. The Committee regrets that insufficient information was provided on the effective level of participation of members of national and ethnic minorities in State institutions, and in particular on the number of women of non-Uzbek ethic origin occupying positions of responsibility within the State party's administrative, political or private sector (art. 5, para. (c); general recommendation 25).

The State party should provide further information on these issues, including disaggregated statistical data by sex, ethnic origin, occupational sector, and functions assumed.

225. The Committee notes with concern that the State party continues to require an "exit visa" for individuals travelling abroad, which may result in limitations of their freedom of movement. It is also concerned about the continuing existence of a compulsory residence registration system (propiska) in the State party. While acknowledging that it is maintained for purposes of address registration, retention of this system may affect de facto the enjoyment of a number of rights and freedoms. Allegations of corruption in this regard are also of concern (art. 5, para. (d) (i) and (ii)).

The State party is invited to abolish the requirement for an "exit visa" and to ensure that the existing compulsory residence registration system does not limit the rights and freedoms of the State party's citizens. The State party is invited to present, in its next periodic report, statistical data on the number of propiska applications (disaggregated by region/ethnic origin of applicants) and their outcome.

226. Notwithstanding the delegation's statement according to which no specific problems are encountered by the Roma population, the Committee regrets the absence of information in the State party's report in this regard (art. 5; general recommendation 27).

The Committee recommends that the State party include detailed information in its next report on the situation of Roma. It recalls its general recommendation 27 and recommends that the State party adopt a strategy with a view to protecting them against discrimination by State bodies, as well as by any person or organization.

227. The Committee notes with concern that, according to information received, some minority languages have limited access to public media, in particular television broadcasts (art. 5, para. (d) (viii)).

The Committee recommends that the State party ensure that sufficient time is devoted to programmes in minority languages in the public media. The State party should take steps to facilitate the publication of newspapers in minority languages. Particular efforts should be made in this regard in relation to the use of Tajik, the language spoken by the largest minority.

228. While appreciating the State party's efforts to provide children belonging to ethnic minorities with education in their native language, the Committee notes the reports according to which in practice there is a lack of educational materials/textbooks in some languages (art. 5, para. (e) (v)).

The Committee encourages the State party to undertake consultations with concerned minority groups, and make every effort to address their concerns in this regard. The State party should submit information on the measures taken, and provide disaggregated data on the number of schools teaching in minority languages, their geographical distribution, quality of education provided, and difficulties encountered, if any. It should ensure that all public schools have equal access to public funds for education, including educational materials and infrastructure.

229. The Committee notes that there have been no court cases concerning racial discrimination (art. 6; general recommendation 31).

The Committee invites the State party to verify whether the absence of complaints about racial discrimination is not the result of victims' lack of awareness of their rights, or their lack of confidence in the police and the judicial authorities, or to the authorities' lack of attention or sensitivity to cases of racial discrimination. The next periodic report should contain an analysis of the situation in this respect.

230. The Committee has noted with interest the information provided by the State party on the work of the National Centre for Human Rights. No information was provided, however, to confirm that the Centre complies with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles), article 6.

The Committee encourages the State party to establish a national institution, in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles) (General Assembly resolution 48/134).

231. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and reiterates its invitation to the State party to consider the possibility of so doing.

232. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 57/194, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal was reiterated by the Assembly in resolution 58/160.

233. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the

domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report specific information on action plans or other measures they have taken to implement the Durban Declaration and Programme of Action at the national level.

234. The Committee encourages the State party to continue consulting with all relevant representatives of the civil society in the elaboration of its next periodic report.

235. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized, in Uzbek and in the main minority languages.

236. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 215, 221, 222 and 224 above, within one year of the adoption of the present conclusions.

237. The Committee recommends to the State party that it submit its sixth and seventh periodic reports in a single document on 28 November 2008.

DENMARK

238. The Committee considered the sixteenth and seventeenth periodic reports of Denmark, submitted as one document (CERD/C/496/Add.1), at its 1772nd and 1773rd meetings (CERD/C/SR.1772 and 1773), held on 9 and 10 August 2006. At its 1785th meeting (CERD/C/SR.1785), held on 18 August 2006, it adopted the following concluding observations.

A. Introduction

239. The Committee welcomes the timely submission of the report, and notes with appreciation that it included responses to the concerns raised in the Committee's previous concluding observations. The Committee also expresses appreciation for the frank dialogue held with the delegation and for the comprehensive and thorough answers given orally to the list of issues and to the wide range of questions raised by members. It appreciates the opportunity thus provided to pursue the constructive dialogue with the State party.

B. Positive aspects

240. The Committee welcomes the adoption, in November 2003, of a National Action Plan to Promote Equal Treatment and Diversity and to Combat Racism, as a follow-up to the Durban Declaration and Programme of Action.

241. The Committee welcomes the adoption, in May 2003, of the Act on Equal Ethnic Treatment, prohibiting discrimination on the grounds of racial and ethnic origin as regards access to social protection, access to and supply of goods and services, and including also a prohibition of harassment on the grounds of race and ethnic origin.

242. The Committee notes with appreciation the activities undertaken by the Danish Institute for Human Rights in the fight against racial discrimination, as well as its useful participation in the dialogue with the State party.

243. The Committee notes with appreciation that section 81 of the Criminal Code, which entered into force on 2 April 2004, introduced an aggravating circumstance for offences based on another's ethnic origin, faith, sexual orientation or the like.

244. The Committee welcomes the decision of the State party to establish two new reporting systems on decisions in criminal cases where the crime has been committed on account of the victim's race, nationality, ethnic background, religious belief or sexual orientation on the one hand, and concerning the implementation of the Danish Act of Prohibition against Discrimination on the Basis of Race on the other hand.

245. The Committee notes with satisfaction that Roma children in Denmark are no longer subject to classes established only on the basis of their ethnicity.

246. The Committee welcomes the awareness campaigns carried out in the State party, in particular the campaign "Show Racism the Red Card", which involves the participation of professional football players in the fight against racial discrimination.

C. Concerns and recommendations

247. The Committee, while acknowledging the practice of national courts to directly apply the provisions of the Convention, regrets the State party's decision not to incorporate the Convention in the domestic legal order, particularly in light of the fact that the State party has incorporated other international instruments in domestic law (art. 2).

The Committee encourages the State party, in order to give full effect to the provisions of the Convention, to reconsider its decision not to incorporate the Convention in the domestic legal order.

248. The Committee, while taking note of the State party's efforts to combat hate crimes, is concerned about the increase in the number of racially motivated offences and in the number of complaints of hate speech. The Committee is also concerned about hate speech by some politicians in Denmark. While taking note of the statistical data provided on complaints and prosecutions launched under section 266 (b) of the Criminal Code, the Committee notes the refusal by the Public Prosecutor to initiate court proceedings in some cases, including the case of the publication of some cartoons associating Islam with terrorism (arts. 4 (a) and 6).

The State party should increase its efforts to prevent racially motivated offences and hate speech, and to ensure that relevant criminal law provisions are effectively implemented. The Committee recalls that the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas, and recommends that the State party take resolute action to counter any tendency to target, stigmatize, stereotype or profile people on the basis of race, colour, descent, and national or ethnic origin, especially by politicians. Bearing in mind its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee also requests the State party to remind

public prosecutors and members of the prosecution service of the general importance of prosecuting racist acts, including minor offences committed with racist motives, since any racially motivated offence undermines social cohesion and society as a whole.

249. The Committee regrets that the State party has not provided sufficient information on the Roma population in Denmark, nor on the enjoyment of their rights under the Convention (arts. 2 and 5).

The Committee recommends that the State party provide relevant information in this regard. It would like to be informed about the reasons why the Roma do not enjoy the status of national minority under the Framework Convention for the Protection of National Minorities, with all the rights this entails.

250. The Committee notes with concern that decisions by the Refugee Board on asylum requests are final and may not be appealed before a court. It is also concerned about information according to which asylum-seekers may live with their children in centres for several years, do not have the right to engage in social, professional, educational and cultural activities outside these centres except to a limited extent, and may be transferred many times from one centre to another, thereby weakening established relationships (art. 5).

The Committee recommends that asylum-seekers be granted the right to appeal against the Refugee Board's decisions. It also recommends that the State party review its policy in relation to centres for asylum-seekers so as to ensure that their rights under the Convention are fully respected.

251. While noting that the State party is currently studying the matter, the Committee is concerned that foreign women who are victims of domestic violence may not seek assistance or ask for separation or divorce for fear of expulsion, although they may obtain a permit to stay for two years in Denmark (art. 5 (b)).

The Committee, drawing the attention of the State party to its general recommendation 25 (2000) on gender-related dimensions of racial discrimination, recommends that the State party take into consideration the specific vulnerability of foreign women victims of domestic violence, and take all appropriate steps to remove deterrents to their seeking assistance or taking steps to seek separation or divorce.

252. The Committee reiterates its concern regarding the restrictive conditions in Danish legislation regarding family reunification. In particular, the conditions that both spouses must have attained the age of 24 to be eligible for family reunification, and that their aggregate ties with Denmark must be stronger than their ties with any other country unless the spouse living in Denmark has been a Danish national or has been residing in Denmark for more than 28 years, may lead to a situation where persons belonging to ethnic or national minority groups are discriminated against in the enjoyment of their right to family life, marriage and choice of spouse. The Committee also regrets that the right to family reunification is restricted to children below the age of 15 (art. 5 (d) (iv)).

The Committee recommends that the State party review its legislation to ensure that the right to family life, marriage and choice of spouse is guaranteed to every person without discrimination based on national or ethnic origin. It also recommends that the right to family reunification be allowed to children below the age of 18. The State party should ensure that the measures it adopts to prevent forced marriages do not impact disproportionately on the rights of persons belonging to ethnic or national minorities. It should also assess the extent to which the condition for spousal reunification that the spouse residing in Denmark must provide a bank guarantee and may not have received any public assistance for sustenance within the last year before the reunification amounts to indirect discrimination against minority groups who tend to suffer from socio-economic marginalization.

253. The Committee is concerned that unemployment among "immigrants" and "descendants" from countries outside the European Union, North America and the Nordic countries continues to be significantly higher than among persons of Danish descent, a phenomenon which is acknowledged by the State party (art. 5 (e) (i)).

The Committee recommends that the State party assess the extent to which the disproportionate level of unemployment among persons coming or originating from countries outside the European Union, North America and the Nordic countries is the result of discrimination they face in accessing jobs, and that it take measures to combat this phenomenon.

254. The Committee, while welcoming the State party's willingness to prevent processes leading to "ghettoization", regrets that it has not received sufficient information on the impact of such policies on the right to freedom of residence of persons belonging to ethnic or national minorities, as well as on the enjoyment in practice of their cultural rights (art. 5 (d) (i) and (e) (iii) and (vi)).

The Committee wishes to receive more detailed information on this issue, in particular on measures adopted by the State party to strike an adequate balance between the need to prevent "ghettoization" and the right to freedom of residence and the cultural rights of persons belonging to ethnic or national minorities. The Committee wishes to be informed about the extent to which concerned persons participate in the decision-making affecting them.

255. The Committee is concerned that under Act No. 361 of June 2002, social benefits for persons newly arrived in Denmark are reduced in order to entice them to seek employment, a policy which has reportedly created social marginalization, poverty and greater dependence on the social welfare system for those who have not become self-sufficient. The Committee, while understanding that the new regulation applies to both citizens and non-citizens, notes with concern that it is foreign nationals who are mainly affected by this policy (art. 5).

The Committee recommends that the State party review its policy in order to ensure that foreigners newly arrived in Denmark are not pushed into poverty and social marginalization.

256. The Committee, while welcoming the municipalities' obligation to offer mother-tongue teaching to bilingual students coming or originating from the European Union and European Economic Area countries, as well as from the Faroe Islands and Greenland, regrets that in 2002, the municipalities' obligation to do so for bilingual students from other countries was repealed and that municipalities no longer receive financial support for that purpose (art. 5 (e) (v) and (vi)).

The Committee recommends that the State party review its policy, taking into consideration its obligation under the Convention not to discriminate against persons on the basis of their national or ethnic origin or against any particular nationality. The Committee recalls that differential treatment based on nationality and national or ethnic origin constitutes discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.

257. The Committee notes with concern that the Supreme Court decision of 28 November 2003 relating to the case of the Thule Tribe of Greenland, did not consider the Thule Tribe as a distinct indigenous people despite the tribe's perception to the contrary, on the ground that today they share the same conditions as the rest of the Greenlandic people.

The Committee, drawing the attention of the State party to its general recommendations 8 (1990) on identification with a particular racial or ethnic group and 23 (1997) on indigenous peoples, recommends that the State party pay particular attention to the way in which indigenous peoples identify themselves.

258. The Committee, while welcoming the power granted to the Complaints Committee for Ethnic Equal Treatment to review individual complaints of discrimination on the grounds of racial and ethnic origin, notes with concern that the Complaints Committee cannot recommend that free legal aid be granted to alleged victims when an assessment before the courts is desirable and the Committee cannot reach a conclusion that discrimination has occurred through its own investigation of the case (art. 6).

The Committee recommends that the State party ensure that the Complaints Committee has adequate powers to fulfil its task to combat racial discrimination, in particular by granting it the power to recommend that free legal aid be granted to the alleged victim when it sees fit.

259. The Committee, while welcoming the State party's efforts to enhance the economic and social participation of persons belonging to national or ethnic minorities, notes that integration policies and programmes seem to discourage them from expressing and developing their culture. It notes with concern that the school curriculum, at all levels of education, does not seem to include sufficient information on their culture and that the cultural diversity of Denmark is reportedly not sufficiently reflected in the fields of culture and information (arts. 5 and 7).

The State party should adopt immediate and effective measures to reflect the cultural diversity of Denmark in the fields of education, culture and information. The Committee also recommends that the State party ensure that its integration

policies and programmes have neither the purpose nor the effect of restricting cultural rights of persons belonging to national or ethnic minorities in a disproportionate manner. The Committee further encourages the State party to ensure the participation of these groups in the design and implementation of integration policies and programmes, at both national and local levels.

260. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized.

261. The State party should within one year provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 248, 250 and 252 above, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure.

262. The Committee recommends that the State party submit its eighteenth periodic report jointly with its nineteenth periodic report in a single report by 8 January 2009, and that it address all points raised in the present concluding observations.

ESTONIA

263. The Committee considered the sixth and seventh periodic reports of Estonia, due in 2002 and 2004, respectively, and submitted in one document (CERD/C/465/Add.1), at its 1761st and 1762nd meetings (CERD/C/SR.1761 and 1762), held on 31 July and 2 August 2006. At its 1778th and 1779th meetings (CERD/C/SR.1778 and 1779), held on 14 and 15 August 2006, it adopted the following concluding observations.

A. Introduction

264. The Committee welcomes the report and the continuation of an open and constructive dialogue with the State party. It also welcomes the fact that the report addresses some of the concerns and recommendations set forth by the Committee in its previous concluding observations, and it appreciates the efforts made by the delegation to respond to the numerous questions raised by Committee members.

265. The Committee notes with appreciation the involvement of civil society organizations in the preparation of the report, and references made in the report to the comments of such organizations.

B. Positive aspects

266. The Committee notes the decisions of the Supreme Court on the principles of equality and protection of family life, which declared unconstitutional several decisions that had refused the granting of residence permits on the sole basis of immigration quotas.

267. The Committee commends the State party for its continuing efforts to encourage social integration of non-citizens in Estonia, including the planned adoption of a new State Integration Programme for the years 2008-2013 following the expiry of the current programme in 2007.

268. The Committee welcomes the fact that non-citizens in Estonia have the right to participate in local elections.

269. The Committee also welcomes the efforts made by the State party to combat trafficking in persons, including the adoption, in January 2006, of the National Action Plan against Trafficking in Human Beings.

270. The Committee welcomes the efforts made by the State party to combat hate speech on the Internet.

C. Concerns and recommendations

271. While acknowledging the existing possibilities for non-citizens to participate in the activities of cultural and educational institutions and religious congregations of national minorities, the Committee notes that the current official definition of national minority, provided under the Law on Cultural Autonomy of National Minorities of 1993, excludes non-citizens, which category includes stateless persons with long-term residence in Estonia. The Committee is concerned that such a situation might lead to the alienation of that group from the Estonian State and society (art. 1).

The Committee recommends that the definition of minority under the Law on Cultural Autonomy of National Minorities of 1993 be amended to include non-citizens, in particular, stateless persons with long-term residence in Estonia. The Committee also requests further clarification of the distinction made by the State party between "ethnic" minorities or groups, and "national" minorities.

272. While acknowledging the amendment of 1 January 2004 to the Chancellor of Justice Act which grants competence to the Chancellor of Justice for the resolution of disputes related to racial discrimination in the private sphere, the Committee notes with regret that the procedure before the Chancellor remains a limited instrument in terms of protection of the rights set out in the Convention, and notes the absence in the State party of a national human rights institution established in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (art. 2 (1)).

The Committee recommends to the State party that it consider establishing a national human rights institution in accordance with the Paris Principles (General Assembly resolution 48/134, annex).

273. While acknowledging the amendments to the Penal Code of July 2004, which establish different degrees of penalties for acts of racial discrimination, and the fact that the State party has expressed its intention to transpose European Union Directive 2000/43/EC against racial discrimination into the domestic legal order, the Committee remains concerned about the absence of comprehensive anti-discrimination legislation, in particular legislation and regulations in the civil and administrative fields (art. 2 (1) (d)).

The Committee recommends that the State party enact comprehensive anti-discrimination legislation in accordance with the provisions of the Convention, in particular in the fields of housing, health care, social security (including pensions), education and access to public services, and that it transpose European Union Directive 2000/43/EC into its domestic legal order.

274. The Committee is concerned that some television programmes may portray discriminatory images of the Roma community and that insufficient measures have been taken by the State party to address this situation (arts. 4 (a) and 7).

The Committee recommends that the State party encourage the media to play an active role in combating prejudices and negative stereotypes which lead to racial discrimination and that it adopt all necessary measures to combat racism in the media, including through investigations and sanctions under article 151 of the Criminal Code for all those who incite racial hatred.

275. The Committee is concerned that persons belonging to Russian-speaking minorities are disproportionately represented in the population of convicted prisoners and that, despite recommendations by competent bodies, no specific study to identify the reasons for this phenomenon has yet been carried out (art. 5 (b)).

The Committee recommends that the State party conduct a study to fully examine the reasons for the disproportionate representation of members of Russian-speaking minorities in the population of convicted prisoners, in order to identify adequate solutions to address this situation. The Committee requests the State party to include results of this study in its next periodic report.

276. The Committee reiterates its previous concern that article 48 of the Constitution recognizes the right of membership of political parties only for Estonian citizens (art. 5 (c)).

Taking into account the high number of long-term residents in Estonia who are stateless, the Committee recommends that the State party give due consideration to the possibility of allowing non-citizens to participate in political parties.

277. While acknowledging the State party's political will to preserve its cultural heritage, as well as the positive steps taken by the State party to ensure broader access to the naturalization procedure, in particular through subsidized language courses, the Committee reiterates its concerns about the strict language requirements set forth in the Citizenship Act for the acquisition of Estonian citizenship. The Committee further notes with regret that the State party has not yet implemented the recommendation, made in its previous concluding observations, to become a party to the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons (art. 5 (d) (iii)).

Given the considerable number of persons who remain stateless in Estonia, the Committee recommends that the State party make further efforts to enhance and facilitate access to the naturalization process. In particular, the Committee recommends that the State party consider providing to all citizenship applicants high-quality and free-of-charge language courses, and strengthen awareness-raising of the naturalization procedure and its benefits. The Committee reiterates its invitation to the State party to ratify the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons.

278. While the Committee recognizes the efforts made by the State party in the field of employment, including the action plans for 2004-2007 under the State integration programmes, it remains concerned at the high rate of unemployment among members of minorities, in

particular Russian-speaking minorities. The Committee reiterates its previous concern that the scope of the requirement of Estonian language proficiency, including in the private sector, may have a discriminatory effect on the availability of employment to members of this community (art. 5 (e) (i)).

The Committee recommends that legislation prohibiting discrimination in employment and all discriminatory practices in the labour market be fully implemented in practice and that further measures be taken to reduce unemployment among members of the minority communities, inter alia by focusing on professional training and providing high-quality and subsidized language training, in particular to members of Russian-speaking minorities.

279. While acknowledging the State party's efforts to implement programmes and projects in the field of health, in particular for the prevention and treatment of HIV/AIDS, the Committee is concerned at the high rate of HIV/AIDS among persons belonging to minorities (art. 5 (e) (iv)).

The Committee recommends that the State party continue to implement programmes and projects in the field of health, with particular attention to minorities, bearing in mind their disadvantaged situation; to this end, the Committee encourages the State party to take further measures to combat HIV/AIDS.

280. While acknowledging the existing programme to increase educational opportunities for children belonging to the Roma minority, the Committee is concerned about the limited proportion of Roma children who attend school (art. 5 (e) (v)).

The Committee draws the attention of the State party to its general recommendation 27 on discrimination against Roma and recommends that the State party strengthen its efforts to address the low level of school attendance among children belonging to the Roma community by, inter alia, recruiting additional school personnel from among the members of the Roma community and promoting intercultural education.

281. The Committee is concerned that very few acts of racial discrimination have been prosecuted and punished in the State party (art. 6).

The Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be mainly an indication of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. The Committee requests the State party to ensure that appropriate provisions are available in national legislation, and to inform the public about all legal remedies in the field of racial discrimination.

282. While noting that there are a large number of minorities in Estonia, in particular Russian speakers, the Committee is concerned that only 4.8 per cent of Estonian television has bilingual programming.

The Committee recommends that the State party elaborate and implement an equitable and balanced language policy in the mass media to prevent and eradicate racial discrimination in this field.

283. The Committee reiterates its recommendation that the State party should take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards articles 2-7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

284. The Committee is encouraged to learn that despite a technical delay, the State party still intends to make the optional declaration provided for in article 14 of the Convention, and reiterates the recommendation that it consider doing so.

285. The Committee strongly encourages the State party to ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this regard, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment, and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

286. The Committee encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

287. The Committee notes that the State party has not ratified Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and recommends that it consider doing so.

288. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, in the main languages spoken in the State party, including minority languages, and that the observations of the Committee with respect to these reports be similarly publicized.

289. The State party should within one year provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 273, 277 and 278 above, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure.

290. The Committee recommends that the State party submit its eighth periodic report jointly with its ninth periodic report, in a single report, by 20 November 2008, and that it address all points raised in the present concluding observations.

MONGOLIA

291. The Committee considered the sixteenth to eighteenth periodic reports of Mongolia, submitted in one document (CERD/C/476/Add.6), at its 1770th and 1771st meetings (CERD/C/SR.1770 and 1771), held on 8 and 9 August 2006. At its 1783rd meeting (CERD/C/SR.1783), held on 17 August 2006, it adopted the following concluding observations.

A. Introduction

292. The Committee welcomes the report submitted by the State party and the additional oral information provided by the delegation during the consideration of the report, in particular, the detailed response to the list of issues. The Committee is encouraged by the attendance of a high-ranking delegation and expresses appreciation for the opportunity to renew its dialogue with the State party.

293. The Committee notes the efforts made by the State party to comply with the reporting guidelines of the Committee. It regrets, however, the general brevity of the report and the lack of sufficient information on the practical application of the Convention.

B. Positive aspects

294. The Committee welcomes the entry into force, in 1999, of the Labour Law, including provisions which prohibit discrimination in labour relations on the basis of nationality, race, sex, social origin or status, wealth, religion or ideology.

295. The Committee welcomes the ratification by the State party of the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography, in 2000; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2002; and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2002.

296. The Committee notes with satisfaction the establishment, in 2001, of the National Commission for Human Rights of Mongolia, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex).

297. The Committee commends the enactment, in 2001, of the Law on Advertisement, which contains a provision prohibiting advertisements in the media unfavourably comparing religions, professions, sexes, ages, social status, languages and ethnic groups, or promoting racial discrimination and discord.

298. The Committee notes with satisfaction that, in 2002, the Parliament passed the new amended Criminal Code which provides for three types of offences of racial discrimination and acts of genocide.

299. The Committee welcomes the enactment, in 2002, of the new Civil Code which stipulates that non-citizens have the same rights as citizens in civil legal matters.

300. The Committee welcomes the adoption, in 2003, of the National Human Rights Action Plan.

301. The Committee notes with satisfaction the adoption, in 2005, of the Tuva Language Study Programme aimed at supporting the Tsaatan minority in their efforts to preserve their cultural heritage, following the publication of a study on the "State of Rights and Freedoms of the Tsaatan" by the National Human Rights Commission of Mongolia.

C. Concerns and recommendations

302. While noting the explanation of the State party that it has not adopted legislation defining racial discrimination because the Convention is self-executing in Mongolia's domestic legal order, the Committee remains concerned that no clear definition of racial discrimination exists in the legislation of the State party (art. 1).

The Committee recommends to the State party that it adopt a definition of racial discrimination that includes all the elements contained in article 1 of the Convention.

303. While acknowledging the State party's security concerns, the Committee remains concerned that articles 24 and 25 of the Legal Status of Foreign Citizens (1993) prescribe numerical thresholds for the entry and residence of non-citizens according to nationality (arts. 2 and 5).

In light of its general recommendation 30 on non-citizens, the Committee recommends that the State party consider the possibility of amending the relevant provisions of the Law on the Legal Status of Foreign Citizens (1993) so as to ensure that its immigration policy does not have the effect of discriminating on the basis of nationality.

304. While the Committee acknowledges the recent progress made by the State party in the adoption of new legislation, the Committee remains concerned about the absence of legislation and regulations on racial discrimination in the civil and administrative fields (art. 2 (1) (d)).

The Committee reiterates its previous recommendation that the State party should give serious consideration to enacting comprehensive legislation to prevent and prohibit racial discrimination, including the provision of effective remedies against racial discrimination in civil and administrative proceedings.

305. While noting the statistical information provided by the State party on the representation of the different ethnic communities in Parliament, national and local government, the judiciary and the police, the Committee remains concerned about the low levels of representation of minority groups in the police force (arts. 2 (2), 5 (c) and 7).

The Committee recommends that the State party consider adopting measures to ensure that ethnic minorities are duly represented in State institutions and the public administration, including special measures aimed at achieving adequate representation of all ethnic groups in the police force. Furthermore, in line with the Committee's general recommendation 13, the Committee urges the State party to provide specific training to law enforcement officers to ensure that, in the performance of their duties, they respect and protect the human rights of all persons without distinction as to race, colour, descent, or national or ethnic origin.

306. The Committee notes the absence of provisions in domestic law declaring illegal and prohibiting organizations which promote and incite racial discrimination (art. 4 (b)).

The Committee draws the attention of the State party to its general recommendation 15 on organized violence based on ethnic origin and invites the State party to adopt legislation to fully implement the provisions of article 4 (b) of the Convention.

307. Following the State party's statement that the rights of non-citizens are granted on the basis of reciprocity, the Committee is concerned that the rights and freedoms guaranteed under article 5 of the Convention may not be fully available to non-citizens in Mongolia to the extent recognized under international law (art. 5).

In light of general recommendation 30 on non-citizens, the Committee urges the State party to take all necessary measures to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights and to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law. The Committee wishes to receive information in this regard in the next periodic report.

308. While noting that the State party has been cooperating with the Office of the United Nations High Commissioner for Refugees (UNHCR), the Committee is concerned that the State party has yet to enact legislation on asylum matters and to introduce an asylum-determination procedure. It also regrets the lack of information provided by the State party on refugees and asylum-seekers residing in Mongolia, including information on unaccompanied asylum-seeking minors, given that under article 19 of the Law on the Legal Status of Foreign Citizens (1993), children without accompanying guardians are automatically denied entry into Mongolia upon arrival (art. 5).

The Committee requests the State party to provide in the next periodic report updated information relating to the treatment of refugees and asylum-seekers, including information on rules and procedures governing the treatment of unaccompanied asylum-seeking minors. The Committee recommends that the State party take effective measures to guarantee the rights of asylum-seekers to information, interpretation, legal assistance and judicial remedies, and invites the State party to consider ratifying the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

309. The Committee, while commending the serious efforts of the State party to reduce poverty, including the enactment, in 2003, of the Law on Management and Finance of the Regions Development, remains concerned about the significant disparities in the enjoyment of economic, social and cultural rights that persist in the State party, particularly affecting ethnic groups in rural and remote areas (art. 5 (e)).

The Committee recalls that the low level of economic, social and cultural development of certain ethnic groups as compared with the rest of the population might be an indication of de facto discrimination, even if it is not the direct result of a deliberate effort by the Government to prevent part of its population from enjoying its rights. It therefore recommends to the State party that it conduct studies with a view to assessing and evaluating the level of enjoyment of economic, social and cultural rights by different ethnic groups in the State party.

310. While taking note of the explanations provided by the State party that in practice, non-citizens are not prohibited from changing employment provided that they inform the relevant agency, the Committee is concerned about article 11.3 of the Law on the Legal Status of Foreign Citizens (1993) which prohibits non-citizens from entering into a new labour contract prior to the expiry of the contract with which he/she entered Mongolia. Furthermore, the Committee seeks clarification of the law and practice permitting employment of non-citizens in the public service in light of its general comment 30 on non-citizens (art. 5 (e) (i)).

The Committee recommends that the State party amend the relevant articles of the Law on the Legal Status of Foreign Citizens (1993) to ensure that non-citizens are able to freely exercise their right to seek alternative employment except where the authorization of residence is expressly dependent upon the specific remunerated activity for which they were admitted. The Committee also encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

311. The Committee is concerned about the lack of practical measures to support minority languages and to facilitate access to education by children belonging to ethnic minority groups. Furthermore, the Committee, while appreciating the State party's efforts to provide Kazakh children with education in their native language, is also concerned about the lack of measures to ensure that children whose mother tongue is a minority language, including Kazakh children, are provided with adequate opportunities to learn Mongolian as a second language (art. 5 (e) (v) and (vi)).

The Committee recommends to the State party that it facilitate the participation of ethnic minorities in the elaboration of cultural and educational policies that will enable persons belonging to minorities to learn or to have instruction in their mother tongue, as well as in the official language. The Committee requests that the State party include in its next periodic report detailed information on this issue, and provide the text of the Official Language Law and the Law on Culture.

312. The Committee notes the statement by the State party that there have been no reports of racial discrimination in Mongolia (art. 6).

The Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be mainly an indication of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. The Committee requests the State party to ensure that appropriate provisions are available in national legislation, and to inform the public about all legal remedies in the field of racial discrimination. The Committee requests that the State party include in its next periodic report available information on complaints lodged, including those submitted to the National Human Rights Commission, and prosecutions launched, as well as penalties imposed, in cases of offences which relate to racial discrimination.

313. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this

connection, the Committee cites General Assembly resolution 57/194 of 18 December 2002, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal was made by the Assembly in its resolution 58/160 of 22 December 2003.

314. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and urges it to consider doing so.

315. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2-7 of the Convention, and that it include in its next periodic report information on further action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

316. The Committee recommends that the State party consult and consider expanding its dialogue with a wide range of organizations of civil society working in the area of combating racial discrimination in connection with the preparation of the next periodic report.

317. The Committee recommends that the State party's reports be made available to the public from the time they are submitted and that the observations and recommendation of the Committee on these reports be similarly publicized.

318. The State party should within one year provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 309 and 310 above, pursuant to paragraph 1 of rule 65 of the rules of procedure.

319. The Committee recommends that the State party submit its nineteenth periodic report jointly with its twentieth and twenty-first periodic reports in a single report by 5 September 2010, and that it address all points raised in the present concluding observations.

NORWAY

320. The Committee considered the seventeenth and eighteenth periodic reports of Norway, submitted in one document (CERD/C/497/Add.1), at its 1774th and 1775th meetings (CERD/C/SR.1774 and CERD/C/SR.1775), held on 10 and 11 August 2006. At its 1784th meeting (CERD/C/SR.1784), held on 17 August 2006, it adopted the following concluding observations.

A. Introduction

321. The Committee welcomes the report submitted by the State party, which is in conformity with the reporting guidelines, and expresses its appreciation for the detailed responses provided to the questions asked during the consideration of the report and for the open, frank and constructive dialogue with the delegation.

322. The Committee notes with appreciation the close collaboration with civil society in the elaboration of the report and that the Norwegian Centre for Human Rights and the Equality and Anti-Discrimination Ombud took the floor during the dialogue with the Committee.

B. Positive aspects

323. The Committee welcomes the fact that in April 2006 the State party established a national human rights institution in accordance with the Paris Principles, that is, the Norwegian Centre for Human Rights.

324. The Committee notes with satisfaction the adoption of the Act on the Equality and Anti-Discrimination Ombud and the Equality and Anti-Discrimination Tribunal which entered into force in January 2006.

325. The Committee welcomes the adoption of the Finnmark Act in 2005 which sets out procedures to enhance the Saami people's right to participate in the decision-making processes regarding management of land and natural resources in the areas they occupy.

326. The Committee acknowledges the entry into force in 2006 of the amendments to section 135 (a) of the Penal Code, which aim to strengthen protection against expressions of racial hatred, and the new article 100 of the Norwegian Constitution.

327. The Committee welcomes the establishment of the Romani People's Fund in 2004, the objective of which is to compensate Romani victims for the negative effects of previous assimilation policies. The Committee also welcomes the delegation's assurance that the establishment of the fund signifies a pledge on the part of the Government of Norway not to repeat past policies of assimilation in respect of the Romani people.

328. The Committee welcomes the establishment of the Norwegian Centre for Minority Health Research in 2003, the mandate of which is to promote the best possible health services for groups of refugee and immigrant backgrounds.

329. The Committee also welcomes the setting up of the Directorate of Integration and Diversity in 2006 which aims at promoting diversity and improving the living conditions of immigrants through employment, integration and participation.

330. The Committee welcomes the establishment of the bilingual (Saami and Norwegian) Inner Finnmark District Court on 1 January 2004.

331. The Committee notes with appreciation that Norway has complied with the requirements of the Convention by submitting its reports regularly.

C. Concerns and recommendations

332. The Committee reiterates its concern regarding the lack of statistical data in the report of the State party on the ethnic composition of its population.

The Committee recommends that, in accordance with paragraph 8 of the reporting guidelines, the State party provide information on the use of mother tongues as indicative of ethnic differences, together with information derived from targeted social surveys performed on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, and recalls its general recommendation 8 concerning the self-identification of members of racial and ethnic groups.

333. While observing that the Convention has been incorporated into domestic legislation through the Anti-Discrimination Act in June 2005, the Committee notes that it has not been incorporated through the Human Rights Act of 1999, as requested in its previous concluding observations; this would have ensured that the Convention would prevail over inconsistent domestic legislation.

The Committee invites the State party to consider incorporating the Convention at a higher level in its domestic legal order so as to ensure the primacy of the Convention over domestic legislation in case of conflict.

334. While noting that the State party has explained its difficulty in addressing the notion of "race" in the Convention, the Committee is concerned that the Anti-Discrimination Act does not specifically cover discrimination on the ground of race (arts. 1 and 2).

The Committee recommends that, within the anti-discrimination legislative framework, the State party ensure that discrimination on the ground of race is adequately covered in existing legislation and falls within the mandate of the Equality and Anti-Discrimination Ombud.

335. While taking note of the State party's observation that a formal ban might have the unwanted side-effect of providing legitimacy to racist organizations, the Committee reiterates its concern regarding the absence of any explicit penal provision in national legislation which criminalizes and punishes racist organizations (art. 4 (b)).

The Committee recalls its general recommendation 15 on article 4, according to which all provisions of article 4 of the Convention are of a mandatory character, including declaring illegal and prohibiting all organizations promoting and inciting racial discrimination, and reiterates its recommendation that the State party adopt the necessary legislation in order to ensure full compliance with article 4 (b) of the Convention.

336. The Committee is concerned that the Finnmark Act does not address the special situation of the East Saami people (arts. 5 and 2 (2)).

The Committee recommends that the State party take further steps, in accordance with article 2 (2) of the Convention and its general recommendation 23 on the rights of indigenous peoples, to adopt special and concrete measures to ensure the adequate development and protection of certain highly vulnerable indigenous groups, namely, the East Saami people, for the purpose of guaranteeing the full and equal enjoyment of their human rights and fundamental freedoms, in particular to recognize and respect their distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote their preservation. It also requests the State party to provide further information on the Finnmark Commission and on the draft Nordic Saami Convention in its next periodic report.

337. The Committee is concerned that under the Immigration Act, a non-citizen may be remanded in custody on suspicion of having provided a false identity. It is also concerned that there is no maximum time limit for the period of custody, and at reports that some non-citizens have been in custody on remand for more than one year (art. 5 (a)).

The Committee draws the attention of the State party to its general recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system and general recommendation 30 on discrimination against non-citizens, and recommends that the State party ensure that detention is imposed only on objective grounds stipulated in law, such as the risk of flight, the risk that the person might destroy evidence or influence witnesses, or the risk of a serious disturbance of public order. It also recommends that the persons detained enjoy all the rights to which they are entitled under the relevant international norms.

338. While noting the importance of adequate command of the State language as a vehicle of social integration, the Committee is concerned about the strictness of the language requirements for acquiring Norwegian citizenship in the new Nationality Act (art. 5 (d) (iii)).

In light of general recommendation 30, the Committee recommends that the State party ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship, and that it pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents.

339. While the Committee recognizes the efforts made by the State party in the field of employment, including the Action Plan on the Integration and Inclusion of the Immigrant Population, it remains concerned at the high rate of unemployment among immigrants (art. 5 (e) (i)).

While recognizing the complexity involved in integrating the immigrant population, the Committee recommends, in light of its general recommendation 30, that the State party take more effective measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects. The Committee also recommends that legislation prohibiting discrimination in employment and all discriminatory practices in the labour market be fully implemented in practice and that further measures be taken to reduce unemployment among immigrants present in the State party.

340. The Committee is concerned that many municipalities do not provide sufficient protection from disease in health services for asylum-seekers, refugees and persons reunified with their families (art. 5 (e) (iv)).

In light of its general recommendation 30, the Committee recommends that the State party take all necessary measures to ensure the right of non-citizens to an adequate standard of physical and mental health by, inter alia, improving their access to preventive, curative and palliative health services.

341. The Committee is concerned regarding the high dropout rate of immigrant children in upper secondary education (art. 5 (e) (v)).

The Committee urges the State party to take measures to strengthen participation of children of immigrant backgrounds in upper secondary education. In light of its general recommendation 30, the Committee recommends that the State party ensure that public educational institutions are open to non-citizens and children of undocumented migrants residing in the territory of the State party. It also recommends that it ensure the effective application of the Plan of Action against dropout in upper secondary education 2004-2006.

342. The Committee recommends that the State party continue to take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2-7 of the Convention, and that it include in its next periodic report information on further action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

343. The Committee recommends to the State party that it ratify the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families.

344. The Committee encourages the State party to continue providing awareness-raising training programmes for members of the judiciary, law enforcement officers, teachers, social workers and other public officials on the provisions of the Convention.

345. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of combating racial discrimination in connection with the preparation of the next periodic report.

346. The Committee recommends that the State party's reports be made available to the public from the time they are submitted and that the observations and recommendation of the Committee on these reports be similarly publicized.

347. The State party should within one year provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 336, 338 and 340 above pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure.

348. The Committee recommends that the State party submit its nineteenth periodic report jointly with its twentieth periodic report in a single report by 5 September 2009, and that it address all points raised in the present concluding observations.

OMAN

349. The Committee considered the initial periodic report of Oman, due in 2004 (CERD/C/OMN/1), at its 1768th and 1769th meetings (CERD/C/SR.1768 and 1769), held on 7 and 8 August 2006. At its 1781st and 1782nd meetings (CERD/C/SR.1781 and 1782), held on 16 and 17 August 2006, it adopted the following concluding observations.

A. Introduction

350. The Committee welcomes the initial periodic report submitted by Oman and the opportunity thus offered to initiate a constructive dialogue with the State party.

351. The Committee appreciates the attendance of a high-level delegation and the efforts it made to respond to the questions posed by Committee members. The Committee also notes with appreciation the delegation's assurances relating to the willingness of the State party to pursue the dialogue with the Committee.

352. The Committee notes, however, that the report does not fully comply with the reporting guidelines. While the report provides general information on the laws and regulations and the court system, only limited information was provided on the socio-economic situation of the various ethnic groups living in the territory of the State party and on the practical implementation of the Convention.

B. Positive aspects

353. The Committee notes with satisfaction the efforts made by the State party to submit its initial periodic report in time.

354. The Committee welcomes the recent accession of Oman to the Convention on the Elimination of All Forms of Discrimination against Women.

355. The Committee welcomes steps taken by the State party to guarantee that Omani women exercise all human rights and fundamental freedoms on a basis of equality with men.

356. The Committee notes with satisfaction that the Omani Labour Code affirms the equality of all workers, without any discrimination based on nationality, gender, religion or any other distinction.

357. The Committee welcomes information included in the report concerning the inclusion in school curricula of courses designed to combat racial discrimination and to promote human rights, understanding and tolerance among individuals and groups of different ethnic origins or religious beliefs.

358. The Committee also welcomes the statement made by the delegation that Oman is currently considering acceding to the 1951 Convention relating to the Status of Refugees and to the International Covenant on Economic, Social and Cultural Rights.

C. Concerns and recommendations

359. The Committee takes note of the discrepancy between the State party's assertion that Omani society is ethnically homogeneous, and information that the population includes various ethnic groups, including Balochi, Swahili-speaking Omanis born in Zanzibar and other regions of East Africa, Liwatiyah and Jibalis, as well as a large number of migrant workers from the Indian subcontinent, the Philippines and other Asian countries.

The Committee draws the attention of the State party to its general recommendation 24 (1999) on article 1 of the Convention, as well as to paragraph 8 of its reporting guidelines, and recommends that disaggregated statistical data on the ethnic composition of its population be provided.

360. The Committee notes that article 17 of the Basic Law of the State, on equality and non-discrimination, does not include "race", "descent" and "national or ethnic origin" among the prohibited grounds of discrimination (art. 1).

The Committee recommends that the State party review the definition of discrimination set out in article 17 of the Basic Law of the State with a view to extending the list of prohibited grounds of discrimination in accordance with article 1, paragraph 1, of the Convention.

361. The Committee regrets that the report does not include sufficient information on the measures enacted at the national level to implement the obligations set out in article 2, paragraph 1, of the Convention (art. 2 (1)).

The Committee recommends that the State party include in its next periodic report detailed information on the legislative, judicial, administrative or other measures adopted to give effect to the provisions of article 2, paragraph 1, of the Convention.

362. The Committee is concerned that the scope of article 130 bis of the Omani Criminal Code - which "incriminates any call for racial discrimination in the context of promoting religious or sectarian conflicts" - does not ensure effective punishment of acts of discrimination pursuant to article 4 (a) of the Convention (art. 4 (a)).

The Committee recommends that the State party adopt comprehensive legislation to prevent, prohibit and punish racial discrimination pursuant to article 4 (a) of the Convention.

363. The Committee takes note with concern that in its report, the State party maintains that it has no need to take any measure pursuant to article 4 (b) of the Convention to ban the formation of organizations that promote and incite racial discrimination, on the ground that such organizations do not exist on its territory (art. 4 (b)).

Bearing in mind its general recommendation 15 (1993) on organized violence based on ethnic origin and general recommendation 7 (1985) relating to the legislation to eradicate racial discrimination, the Committee recommends that the State party take the necessary steps to satisfy the requirements of article 4 (b) of the Convention.

364. The Committee is concerned that article 17 of the Basic Law of the State provides that only "citizens" are equal before the law and entitled to exercise public rights without any discrimination based on gender, origin, colour, language, religion, sect, domicile or social status (art. 5).

The Committee draws the attention of the State party to its general recommendation 30 (2004) on non-citizens, and recommends that the State party revise its legislation in order to guarantee equality between citizens and non-citizens in the enjoyment of the rights set forth in the Convention to the extent recognized under international law.

365. The Committee notes that the report does not provide sufficient information with regard to the measures adopted to ensure the equal effective enjoyment of the rights set forth in article 5 of the Convention by members of the various ethnic groups and migrant workers living in the territory of the State party (art. 5).

The Committee requests that the State party provide in its next periodic report detailed information on the legislative, judicial, administrative and other measures adopted to give effect to article 5 of the Convention with regard to the various ethnic groups and migrant workers living in its territory.

366. The Committee is concerned that the Omani Nationality Law does not grant citizenship to children of Omani women married to non-nationals, as it does where the father is Omani. The Committee is concerned that this may lead to a situation of statelessness (art. 5 (c) (iii)).

Bearing in mind general recommendation 30 (2004) on non-citizens, the Committee urges the State party to review its legislation on the acquisition of Omani nationality in order to ensure that both parents are allowed to transmit their citizenship to their children. In addition, the Committee recommends that the State party accede to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.

367. The Committee notes the information included in the report regarding the remedies available in the State party to persons who claim to be victims of acts of racial discrimination, as well as the additional information provided by the delegation regarding the right to compensation set out in article 58 of the Omani Criminal Code. It regrets, however, that the report contains no information on the number and nature of cases relating to racial discrimination brought before the Omani courts, on their outcome and on compensation awarded to victims.

The Committee requests that the State party include in its next periodic report detailed information on remedies available to victims of acts of racial discrimination, as well as statistical information on prosecutions launched, and penalties imposed, in cases of offences which relate to racial discrimination, and where the relevant provisions of the existing domestic legislation have been applied. The Committee points out that the mere absence of complaints and legal action by victims of racial discrimination may be mainly an indication of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. The Committee requests the State party to inform the public about all legal remedies in the field of racial discrimination.

368. The Committee notes that no response was provided by the delegation concerning the establishment of a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex).

The Committee recommends that the State party consider the establishment of a national human rights institution in accordance with the Paris Principles. The Committee requests the State party to include information in this regard in its next periodic report.

369. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and urges it to consider doing so.

370. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this regard, the Committee refers to resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

371. Bearing in mind the high proportion of migrant workers living in the territory of the State party (23.9 per cent of the population), the Committee recommends that the State party accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

372. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2-7 of the Convention, and that it include in its next periodic report specific information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

373. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized.

374. The Committee recommends that the State party consult widely with organizations of civil society working in the area of combating racial discrimination, in connection with the preparation of the next periodic report.

375. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 359 and 363 above, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure.

376. The Committee recommends that the State party submit its second, third and fourth periodic reports in a single document, due on 2 January 2010, and that the report be comprehensive and address all points raised in the present concluding observations.

SOUTH AFRICA

377. The Committee considered the initial to third periodic reports of South Africa, submitted in one document (CERD/C/461/Add.3), at its 1766th and 1767th meetings (CERD/C/SR.1766 and 1767), held on 4 and 7 August 2006. At its 1782nd meeting (CERD/C/SR.1782), held on 16 August 2006, it adopted the following concluding observations.

A. Introduction

378. The Committee notes and wishes to record the profound significance, in fact the emotional overtones, of commencing this constructive dialogue with South Africa, in terms of the Convention whose genesis was strongly influenced by the cruel, inhuman and degrading effects of apartheid in that country.

379. The Committee welcomes the report submitted by the State party and appreciates the presence of a high-ranking delegation which provided additional written and oral information and enabled a frank dialogue with the delegation.

380. Noting that the initial report was presented after a delay of approximately five years, the Committee invites the State party to respect the deadline set for the submission of its next report to the Committee.

B. Factors and difficulties impeding the implementation of the Convention

381. The Committee recognizes that the heritage of a system of governance built by the apartheid regime, in terms of its economic, social and cultural consequences, presents obstacles that hinder the State party's efforts to fully implement the Convention. Beyond the dismantling of the former apartheid structures, the Committee acknowledges that the establishment of a completely non-racist State represents a challenge for the South African society and requires human and financial resources on a scale adequate to meet the many challenges.

C. Positive aspects

382. The Committee expresses its satisfaction over the peaceful transition from apartheid, as well as the adoption of the Constitution of 1996 with its Bill of Rights, enshrining, inter alia, the values of "human dignity, equality and non-racism".

383. The Committee acknowledges with appreciation the numerous legislative measures designed to build a democratic and multicultural society and to combat segregation and racial discrimination, such as the Film and Publication Act of 1996, the South African Schools Act of 1996, the Culture Promotion Amendment Act of 1998, the National Empowerment Fund Act of 1998, the Refugees Act of 1998, the Employment Equity Act of 1999 and the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000.

384. The Committee welcomes the establishment of the South African Human Rights Commission (SAHRC) with competence, inter alia, to promote respect for human rights, monitor and investigate their observance and seek effective redress for human rights violations, notes its very active role in eliminating the residual effects of racial discrimination and appreciates its contribution during the dialogue with the State party.

385. The Committee acknowledges the establishment of "Equality Courts", with the purpose of enforcing the Promotion of Equality Act, whose primary objective is the elimination of racism and discrimination.

386. The Committee also welcomes the adoption of special measures, in the context of the Durban Declaration and Programme of Action, which are in accordance with paragraph 4 of article 1 and paragraph 2 of article 2 of the Convention, with the purpose of securing adequate

advancement of racial or ethnic groups that have experienced discrimination. It draws the attention of the State party, however, to the fact that such "affirmative action" may not lead to the maintenance of unequal or separate rights for those groups after the objectives for which they were taken have been achieved.

D. Concerns and recommendations

387. While acknowledging the historic reasons submitted by the State party not to gather disaggregated data on the ethnic groups that constitute its population, the Committee notes that, in the absence of disaggregated information on the composition of the population, an adequate vision of the diversity of the South African society cannot be obtained, nor an accurate perception of the effective enjoyment of the rights provided in the Convention by different ethnic groups (art. 1).

The Committee recommends that the State party endeavour to include, in its next periodic report, a qualitative description of the ethnic composition of its population, in particular indigenous peoples and non-citizens, and, in this connection, draws the attention of the State party to paragraph 8 of its general guidelines (2000).

388. The Committee notes the lack of information on how the Traditional Leadership and Governance Framework Act of 2003 addresses the status of customary law and traditional leadership, vis-à-vis both national and provincial legislation (art. 2 (c)), in relation to the elimination of racial discrimination.

The Committee recommends that the State party include detailed information in its next periodic report on the role of traditional leadership and on the status of customary law, including on the measures adopted to ensure that the application of such laws does not have the effect of creating or perpetuating racial discrimination.

389. The Committee remains concerned by the de facto segregation that persists as a legacy of apartheid in spite of the measures the State party has adopted to put an end to this situation, especially regarding ownership of property, access to finance, and social services such as health, education and housing (art. 3).

In the light of general recommendation 19 (1995) on racial segregation and apartheid, the Committee recommends that the State party include detailed information in its next periodic report on the specific measures adopted to address the situation of de facto segregation that persists in the State party, and that it provide information on the impact of these measures.

390. While acknowledging the provisions of section 16 (2) of the Constitution, sections 7 of the Promotion of Equality Act, 8 of the Regulation of Gatherings Act, and 29 of the Films and Publication Act, as well as the ongoing discussions started in 2000 on a bill on the prohibition of hate speech, the Committee is concerned about the frequency of hate crimes and hate speech in the State party and the inefficacy of the measures in preventing such acts (art. 4).

In the light of its general recommendation 15 (1993) on organized violence based on ethnic origin, the Committee recommends that the State party ensure the full and adequate implementation of article 4 of the Convention, and that it adopt legislation and other effective measures in order to prevent, combat and punish hate crimes and speech.

391. While taking note of the various existing poverty reduction programmes in the State party, the Committee remains concerned about the extreme poverty of part of its population and its impact on the equal enjoyment of the human rights by the most vulnerable ethnic groups (art. 5).

The Committee recommends that the State party include information in its periodic reports on the socio-economic situation of the population, in particular regarding disadvantaged ethnic groups, and that it adopt all necessary measures to reduce poverty and stimulate economic growth. The Committee requests the State party to provide detailed information on the results of those measures.

392. The Committee is concerned about acts of violence against women, especially reports of rapes and domestic violence, in view of the fact that victims are most often women from disadvantaged and poor ethnic groups (art. 5 (b) and (e)).

In the light of general recommendation 25 (1995) on gender-related dimensions of racial discrimination, the Committee recommends that the State party adopt all necessary measures to address those phenomena of double discrimination, in particular regarding women and children from the most disadvantaged and poor ethnic groups.

393. The Committee notes the absence of specific national legislation criminalizing human trafficking, bearing in mind that victims are often women and children from the most disadvantaged ethnic groups (art. 5 (b) and (e)).

The Committee recommends that the State party adopt legislation, and other effective measures, in order to adequately prevent, combat and punish human trafficking.

394. While noting the promulgation of the Restitution of Land Rights Amendment Act of 2004 and the post-settlement support programmes, the Committee is concerned about the extent of restitution, the sustainable development of resettled communities and the enjoyment of their rights under the Convention, in particular their rights to housing, health, access to water and education (art. 5 (e)).

The Committee encourages the State party to strengthen its policy of land restitution and post-settlement support in order to ensure to those resettled ethnic communities an improvement in the enjoyment of their economic, social and cultural rights under the Convention.

395. The Committee is concerned at the situation of indigenous peoples, inter alia the Khoi, San, Nama and Griqua communities, and, in particular, hunter-gatherer, pastoralist and nomadic groups, and notes the absence of information on the specific measures adopted by the State party to ensure the enjoyment of all rights by those indigenous communities (art. 5 (e)).

In the light of general recommendation 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party provide detailed information in its next periodic report on the situation of the indigenous peoples and on any special measures, pursuant to article 1, paragraph 4, and article 2, paragraph 2, of the Convention, taken with a view to ensuring the enjoyment of their rights under the Convention, including their freedom of movement and their right to participate in decisions affecting them.

396. While acknowledging the State party's programmes for the prevention and treatment of HIV/AIDS, the Committee is concerned at the high rate of HIV/AIDS among persons belonging to the most vulnerable ethnic groups (art. 5 (e)).

The Committee recommends that the State party strengthen its programmes in the field of health, with particular attention to minorities, bearing in mind their disadvantaged situation resulting from poverty and lack of access to education, and encourages the State party to take further measures to combat HIV/AIDS.

397. While noting the recent Refugee Backlog Project, the Committee is concerned about the substantial backlog of asylum-seekers' applications (art. 5 (d) and (e)).

In the light of general recommendation 30 (2004) on discrimination against non-citizens, the Committee encourages the State party to accelerate its measures to reduce the backlog of applications for asylum.

398. While noting the constitutional rights to receive education in the language of one's own choice, the Committee wishes to point out the lack of information on the implementation of these rights as well as on the measures taken with regard to the promotion of constitutionally recognized languages, inter alia, the Khoi, San, Nama and sign languages. The Committee also notes the absence of information on the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (art. 5 (e)).

The Committee recommends that the State party provide information on all languages recognized in the Constitution, especially their use in education, and on the measures to promote indigenous languages, as well as on the status, activities and resources of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

399. The Committee is concerned about allegations of ill-treatment, including extortion, of documented and undocumented non-citizens by law enforcement officials, inter alia in the Lindela Repatriation Centre and at the border, and about the lack of investigation of those cases (arts. 6 and 7).

The Committee recommends that the State party take appropriate measures to eradicate all forms of ill-treatment, including extortion, of non-citizens by law enforcement officials, ensure prompt, thorough, independent and impartial investigation of all those allegations, and prosecute and punish those responsible for those acts. It further recommends that the State party provide non-citizens with adequate information about their rights and the legal remedies available against their violation. The Committee also recommends that the State party provide detailed information in its next report on any specific training programmes and courses for law enforcement officials on human rights and on the provisions of the Convention and their application.

400. While noting the existence of legal aid mechanisms, the Committee is concerned about the difficulties of access to justice, especially for members of the most disadvantaged and poor ethnic groups, including indigenous people, especially those unfamiliar with English or Afrikaans (arts. 5 (a) and 6).

The Committee recommends that the State party take the necessary measures to ensure access to justice, including through the use of official languages other than English and Afrikaans, and to establish mechanisms to strengthen the provision of legal aid for all members of disadvantaged and poor ethnic groups.

401. The Committee notes the absence of information on court cases on racial discrimination in the State party (art. 6).

The Committee requests that the State party include in its next periodic report statistical information on prosecutions launched, and penalties imposed, in cases of offences which relate to racial discrimination, and where the relevant provisions of the existing domestic legislation have been applied. The Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be mainly an indication of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. The Committee requests the State party to ensure that appropriate provisions are available in national legislation and to inform the public about all legal remedies in the field of racial discrimination.

402. While noting the existence of various training programmes for officials of the administration of justice, the Committee is concerned by the findings of SAHRC on the deficiencies in the administration of justice (arts. 6 and 7).

In the light of its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party strengthen its measures to reform the justice system, and raise the sensitivity of its members on the provisions of the Convention and their application. Special consideration may be given to specific issues related to indigenous communities. It further recommends that the State party provide detailed information on training courses for members of the justice system, including proficiency in languages, and on their career development.

403. While acknowledging the "Roll Back Xenophobia" campaign, the Committee remains concerned at the persistence of xenophobic attitudes in the State party and negative stereotyping of non-citizens, including by law enforcement officials and in the media, as well as at reports of racist behaviour and prejudices, in particular in schools and farms, and the inefficiency of the measures to prevent and combat such phenomena (art. 7).

The Committee recommends that the State party strengthen its existing measures to prevent and combat xenophobia and prejudices which lead to racial discrimination, and provide information on the measures adopted with regard to promoting tolerance, in particular in the field of education and through awareness-raising campaigns, including in the media.

404. While acknowledging the adoption of the "South African Millennium Statement on Racism and Programme of Action", the Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention, in particular in respect of articles 2-7 of the Convention. It further recommends that it include in its next periodic report information on measures taken to implement the Durban Declaration and Programme of Action at the national level.

405. The Committee requests that the State party's report and the present concluding observations be widely disseminated throughout the State party, in the appropriate languages.

406. The Committee recommends that the State party consult with organizations of civil society working in the area of combating racial discrimination, as well as with SAHRC, in connection with the preparation of the next periodic report.

407. The Committee wishes to encourage the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as well as the ILO Indigenous and Tribal Peoples Convention, No. 169.

408. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111, concerning the funding of its meetings by the United Nations regular budget. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

409. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 390, 392, 397 and 403 above, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure.

410. The Committee recommends that the State party submit its fourth periodic report jointly with its fifth and sixth periodic reports in a single report by 9 January 2010, and that it address all points raised in the present concluding observations.

UKRAINE

411. The Committee considered the seventeenth and eighteenth periodic reports of Ukraine (CERD/C/UKR/18) at its 1776th and 1777th meetings (CERD/C/SR.1776 and 1777), held on 11 and 14 August 2006. At its 1785th meeting (CERD/C/SR.1785), held on 17 August 2006, it adopted the following concluding observations.

A. Introduction

412. The Committee welcomes the comprehensive report submitted by Ukraine, albeit not in full conformity with the Committee's reporting guidelines. It also welcomes the regularity with which the State party submits its reports to the Committee and the frank answers the delegation gave in response to the Committee's questions and the opportunity thus provided to engage in a constructive dialogue.

B. Positive aspects

413. The Committee welcomes the State party's ongoing legislative efforts, as well as its programmes and institutional arrangements, aimed at the integration of ethnic minorities, including:

(a) The bill on amendments to the National Minorities Act currently pending before Parliament which recognizes the right of members of national minorities to use their traditional names and native languages;

(b) The programme, adopted in May 2006, for the integration of formerly deported persons, in particular Crimean Tatars, a significant number of whom have returned to Crimea since 1990;

(c) The establishment in 2006 of a Council for State Policies for the advancement of the rights and freedoms of all persons, including those belonging to national minorities, which includes among its members the President of the National Roma Congress.

414. The Committee notes with appreciation that the State party has withdrawn any deadlines for the submission of asylum applications under its Refugee Law.

415. The Committee welcomes information from the State party that a considerable number of minority children receive instruction in, or on, their language and culture, including some 5,000 Roma children in Transcarpathia and some 3,500 Crimean Tatar children in the Autonomous Republic of Crimea.

C. Concerns and recommendations

416. The Committee is concerned that the Office of the Ukrainian Parliamentary Commissioner for Human Rights is reportedly relatively unknown and underfunded and lacks expertise in some areas, and that only 0.5 per cent of the complaints received by the Commissioner concern alleged violations of minority rights.

The Committee recommends to the State party that it ensure adequate funding for the effective and independent functioning of the Parliamentary Commissioner for Human Rights with a view to strengthening its expertise in all areas of human rights, as well as its capacity to process complaints. It should also widen public access, including by minority groups, to the Commissioner's Office at the regional, district and municipal levels.

417. The Committee notes with concern that the draft Anti-Discrimination Bill covers direct but not indirect discrimination. It recalls that the definition of discrimination in article 1 of the Convention covers any unjustified distinction which has either the purpose or the effect of impairing particular rights and freedoms[9] (art. 1 (1)).

The Committee recommends that the State party proceed with the adoption of a comprehensive Anti-Discrimination Bill which also covers indirect discrimination, in accordance with article 1 of the Convention.

418. Although it is not widespread, the Committee is nevertheless concerned about reports of vandalism of religious sites of minorities, such as defacing of synagogues in different areas of Ukraine, as well as of anti-Muslim and anti-Tatar statements by Orthodox priests in Crimea (arts. 4 (a) and 5 (d) (vii)).

The Committee recommends to the State party that it take preventive measures against acts directed against persons or religious sites belonging to minorities and that it investigate such acts and bring perpetrators to justice.

419. While noting that incitement to racial discrimination is punishable under articles 66, 67 and 161 of the Criminal Code, as well as under articles 46 and 47 of the Law on Information and article 3 of the Print Media (Press) Act, the Committee is concerned about the absence of any prosecutions under article 161 of the Criminal Code which only applies to cases where intent can be proven and only if the victim of such discrimination is a citizen (arts. 4 (a) and 6).

The Committee urges the State party to consider a relaxation of the strict requirement of wilful conduct set out in article 161 of the Criminal Code in order to facilitate successful prosecutions under that article. The Committee also requests the State party to consider extending the application of article 161 of the Criminal Code to cases where the victim of discrimination is not a citizen. It urges the State party to ensure the effective implementation of all legal provisions aimed at eliminating racial discrimination, and to provide in its next report updated information concerning the application by the Ukrainian courts of criminal law provisions punishing acts of racial discrimination, in particular articles 66 and 161 of the Criminal Code. Such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any compensation or other remedies provided to victims of such acts.

420. The Committee notes with concern that article 4 of the Citizens' Associations Act does not explicitly preclude the legal registration of associations advocating racial discrimination (art. 4 (b)).

The Committee recommends that the State party consider explicitly including organizations which promote and incite racial discrimination on the list of prohibited associations that are barred from legal registration under article 4 of the Citizens' Association Act.

421. The Committee is concerned about reports that the lack of personal and other relevant identification documents effectively deprives many Roma of their right to equal access to the courts, legal aid, employment, housing, health care, social security and education (art. 5 (a) and (e)).

The Committee urges the State party to take immediate steps, e.g. by removing administrative obstacles, to issue all Roma with personal and other relevant identification documents in order to enhance their access to the courts, employment, housing, health care, social security and education.

422. The Committee is concerned about allegations of police abuse of Roma, including arbitrary arrests and searches and pretrial abuse based on racially motivated presumptions of guilt, and of persons belonging to other minorities, asylum-seekers and non-citizens of different ethnic origin (arts. 5 (b), 6 and 7).

The Committee urges the State party to further intensify its human rights training for the police and to facilitate the reporting of cases of police abuse of Roma and other persons of different ethnic origin, effectively investigate complaints and bring those found guilty of such acts to justice, provide adequate protection and compensation to victims, and include in its next report detailed information on the number and nature of cases brought, convictions obtained and sentences imposed, and the protection and remedies provided to victims of such acts. In this regard, it refers the State party to paragraphs 12-14 of general recommendation 27 on discrimination against Roma and paragraphs 18-24 of 30 (2004) on discrimination against non-citizens.

423. The Committee notes with concern that the Refugee Law does not contain standardized refugee determination criteria, a definition of temporary humanitarian protection, or safeguards concerning the withholding of personal data from the authorities of the country of origin to which a rejected asylum-seeker might be deported (art. 5 (b)).

The Committee recommends that the State party consider amending its Refugee Law in order to clearly define standardized refugee determination criteria and to include the concept of temporary protection on humanitarian grounds, as well as safeguards on the withholding of personal data from country of origin authorities.

424. The Committee notes that Crimean Tatars reportedly remain underrepresented in the public service of the Autonomous Republic of Crimea (arts. 5 (c) and 2 (2)).

The Committee recommends that the State party adopt measures, including special measures, to ensure the adequate representation of Crimean Tatars in the public service of the Autonomous Republic of Crimea, including at senior levels.

425. While noting that an important number of formerly deported persons have been repatriated to Crimea since 1990, the Committee is concerned about reports that only 20 per cent of Crimean Tatars have obtained plots of land, mainly in areas considered undesirable by them. It notes with concern that most Crimean Tatars have been excluded from the agrarian land privatization process, as the Ukrainian Land Code requires that applicants for agrarian land plots be former Soviet collective farm workers, and that many Crimean Tatars live in settlements which lack basic infrastructure (art. 5 (d) (v) and (e) (iii)).

The Committee urges the State party to provide effective remedies to enable formerly deported persons, in particular Crimean Tatars, to claim the restitution of their formerly confiscated property, or adequate compensation, and to ensure that formerly deported persons can obtain suitable plots of land, to the extent possible in areas which were traditionally inhabited by them. The State party should ensure that all formerly deported persons have access to adequate housing and that those living in settlements enjoy legal security of tenure and access to adequate infrastructure, including safe water, sewage systems, electricity, gas, heating, roads and transportation.

426. The Committee is concerned about the shortage of publications, in particular textbooks for schoolchildren, in minority languages other than Russian, and about reports that some textbooks contain historically inaccurate information about minorities (art. 5 (d) (viii) and (e) (v)).

The Committee encourages the State party to further promote the publication of textbooks for schoolchildren in minority languages, including the languages of Roma and Crimean Tatars, and to ensure that all ethnically discriminatory content is eliminated from existing textbooks.

427. While noting recent measures taken by the State party to improve the situation of refugees and asylum-seekers, the Committee expresses concern about their limited access to employment and housing, as well as about the reportedly poor conditions in detention centres (art. 5 (e) (i) and (e) (iii)).

The Committee recommends that the State party support and increase the number of social centres assisting refugees and asylum-seekers to find employment and housing, and that it ensure that centres for refugees and persons detained under the aliens legislation provide the necessary facilities, in conformity with the standards set out in general recommendation 30 (2004) on discrimination against non-citizens.

428. The Committee notes with concern that cultural and religious sites, including cemeteries, of minorities such as the Crimean Tatars, the Karaites and the Roma, are reportedly often not registered or protected and that only very limited funds are allocated to the preservation of the cultural heritage of minorities by the State party (art. 5 (e) (vi)).

The Committee recommends that the State party take special measures for the protection and preservation of the cultural heritage of minorities such as the Crimean Tatars, the Karaites and the Roma.

VII. FOLLOW-UP TO INDIVIDUAL COMMUNICATIONS

485. In the past, the Committee only informally monitored whether, how or the extent to which States parties implemented its recommendations adopted following the examination of communications from individuals or from groups of individuals. In light of the positive experiences of other treaty bodies, and following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1, available on the OHCHR website), the Committee decided, at its sixty-seventh session,[1] to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

486. Also at its sixty-seventh session, the Committee decided to add two new paragraphs to its rules of procedure.[2] On 6 March 2006, at its sixty-eighth session, Mr. Alexandre Lindos Sicilianos was appointed Rapporteur for follow-up on opinions. He presented a report to the Committee with recommendations on further action to be taken. This report, which was updated and adopted by the Committee at its sixty-ninth session (see annex V), reflects all cases in which the Committee found violations of the Convention or where it provided suggestions or recommendations although it did not establish a violation of the Convention.

487. The table below shows a complete picture of follow-up replies from States parties received up to 18 August 2006, in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. This table, which will be updated by the Rapporteur on an annual basis, will be included in future annual reports of the Committee.

488. The categorization of follow-up replies by States parties is not always easy. It is therefore not possible to provide a neat statistical breakdown of follow-up replies. Many replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Other replies cannot be considered satisfactory because they either do not address the Committee's recommendations at all or only relate to certain aspects of these recommendations.

489. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 22 complaints and found violations of the Convention in 9 cases. In 8 cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

Notes

[1] See Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18), annex IV, sect. I.

[2] Ibid., annex IV, sect. II.

480. In the petitioner's case, the Committee found that the petitioner had presented such an arguable case, but the State party's failure to investigate and adjudicate the case effectively prevented the determination of whether a substantive violation had occurred. It therefore concluded that the State party had failed to examine the petitioner's arguable claim of a violation of article 5 (f). In particular, it failed to investigate his claim promptly, thoroughly and effectively. Consequently, article 6 of the Convention had been violated.

481. Also at the sixty-eighth session, the Committee adopted its opinion on communication No. 34/2004 (Mohammed Hassan Gelle v. Denmark) (see annex IV). The petitioner, a Danish citizen of Somali origin, considered himself offended by the publication, in a Danish newspaper, of an "open letter" sent to the paper by a member of the Danish Parliament which, in his opinion, equated individuals of Somali origin with paedophiles and rapists. He claimed violations by Denmark of articles 2, paragraph 1 (d), 4 and 6 of the Convention.

482. The petitioner reported the incident to the police and requested criminal prosecution of the author of the letter. The Copenhagen police notified the author's representative that it would not open an investigation, as it could not reasonably be assumed that a criminal offence subject to public prosecution had been committed. The petitioner's appeal against this decision was unsuccessful.

483. The Committee considered the complaint admissible insofar as it related to the State party's failure fully to investigate the incident. On the merits, it considered that the fact that the incriminating letter and its statements had been made in the context of a political debate did not absolve the State party from its duty to investigate whether or not the statements of the member of Parliament amounted to racial discrimination. It recalled that the exercise of the right to freedom of expression carried special duties and responsibilities, and in particular the obligation not to disseminate racist ideas. It further recalled its general recommendation 30 to the effect that it is recommended that States parties take action to counter any tendency to target or stigmatize, on the basis of race, colour, descent, and national or ethnic origin, members of "non-citizen" population groups, especially by politicians.

484. Given Denmark's failure to conduct an effective investigation to determine whether or not an instance of racial discrimination had taken place, the Committee concluded that articles 2, paragraph 1 (d), and 4 of the Convention had been violated. The lack of an effective investigation into the petitioner's complaint pursuant to section 266 (b) of the Danish Criminal Code also violated his right, under article 6 of the Convention, to effective protection and remedies against the reported act of racial discrimination.

Note

[1] On 3 June 2006, the National Assembly of Serbia and Montenegro declared Montenegro's independence. By note verbale of 5 June 2006, the Permanent Mission of the Republic of Serbia to the United Nations Office at Geneva notified the United Nations that membership in the United Nations of Serbia and Montenegro would be continued by the Republic of Serbia.

VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION

475. Under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, individuals or groups of individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to the Committee on the Elimination of Racial Discrimination for consideration. A list of 47 States parties which have recognized the competence of the Committee to consider such communications can be found in annex I, section C. In the period under review, one more State made the declaration under article 14: Bolivia.

476. Consideration of communications under article 14 of the Convention takes place in closed meetings (rule 88 of the Committee's rules of procedure). All documents pertaining to the work of the Committee under article 14 (submissions from the parties and other working documents of the Committee) are confidential.

477. At its sixty-eighth session, the Committee adopted its opinion on communication No. 29/2004 (Dragan Durmic v. Serbia and Montenegro[1]) (see annex IV). The petitioner, a national of Serbia and Montenegro and of Romani origin, claimed to be a victim of violations by Serbia and Montenegro of article 2, paragraph 1 (d), read together with article 5 (f), as well as articles 3, 4 (c) and 6, of the Convention.

478. In 2000, the Humanitarian Law Center (HLC) carried out a series of "tests" across Serbia to establish whether members of the Roma minority were being discriminated against while attempting to access public places. In the context of such "tests" the petitioner and several others of Roma origin were refused access to a discotheque. The Committee considered that the State party had failed to establish whether the petitioner had been refused access to a public place on the grounds of his national or ethnic origin, in violation of article 5 (f) of the Convention. Owing to the failure by the police to carry out a thorough investigation into the matter, the failure of the public prosecutor to reach any conclusion, and the failure of the Court of Serbia and Montenegro even to set a date for the consideration of the case some six years after the incident, the Committee found that the petitioner had been denied an opportunity to establish whether his rights under the Convention had been violated.

479. On the claim under article 6 and the issue of an effective remedy, the Committee noted that in previous jurisprudence it had found violations of article 6 of the Convention without finding violations of any of the substantive articles. Although a literal reading of article 6 would appear to suggest that an act of racial discrimination would have to be established before a petitioner would be entitled to protection and a remedy, the Committee noted that the State party must provide for the determination of the rights under the Convention through the national tribunals and other institutions, a guarantee which would be void were it unavailable in circumstances where a violation had not yet been established. While a State party could not reasonably be required to provide for the determination of rights under the Convention no matter how unmeritorious such claims may be, article 6 provides protection to alleged victims if their claims are arguable under the Convention.

until 30 June 2006, to Mozambique for the submission of the overdue report. The Chairman stressed that if the report was received by the set deadline, it would be examined by the Committee at its seventieth session, to be held in Geneva in early 2007. If the report was not received by 30 June 2006, the Committee decided that it would examine the situation under its review procedure at its sixty-ninth session, to be held from 31 July to 18 August 2006, and to proceed with the adoption of concluding observations in the absence of a report. The second to twelfth periodic reports of Mozambique were received on 30 June 2006.

472. At its 1746th meeting, the Committee decided to request the Chairperson to send a letter to the Permanent Representative of Ethiopia to the United Nations. In his letter of 10 March 2006, the Chairperson informed the State party that it had reviewed the implementation of the Convention in Ethiopia in the absence of a report. The Chairperson regretted the interruption of a dialogue between the Committee and Ethiopia since 1990 and urged the State party to submit as soon as possible, in one combined document, its seventh to fifteenth periodic reports due from 1989 to 2005. In order to assist in the resumption of a dialogue, the Committee decided to send a list of questions to the State party and requested written responses to this list by 31 December 2006. In the absence of any response from Ethiopia by that date, the Committee would proceed with the adoption of concluding observations under its review procedure at its seventieth session, to be held in February/March 2007. The Committee drew the State party's attention to the possibility of availing itself of the technical assistance offered under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights.

473. At its 1779th meeting, the Committee adopted confidential provisional concluding observations on the situation in Seychelles.

474. At its 1780th meeting, the Committee decided to send a letter to Saint Lucia reminding it of its reporting obligations under the Convention and urging it to respond to the list of issues sent in August 2005

in the absence of an initial report, the Committee would consider all information submitted by the State party to other organs of the United Nations or, in the absence of such material, reports and information prepared by organs of the United Nations. In practice the Committee also considers relevant information from other sources, including from non-governmental organizations, whether it is an initial or periodic report that is seriously overdue.

467. Following its sixty-seventh session, the Committee decided to schedule at its sixty-eighth session a review of the implementation of the Convention in the following States parties whose periodic reports were seriously overdue: Antigua and Barbuda, Congo, Ethiopia, Mozambique, Nicaragua and Papua New Guinea. In the cases of Antigua and Barbuda, the Congo and Nicaragua, the reviews were postponed at the request of the States parties, which indicated their intention to submit the requested reports shortly. At its 1745th and 1746th meetings (sixty-eighth session), held on 1 March and 2 March 2006 respectively, the Committee reviewed the implementation of the Convention in Mozambique and Ethiopia (see paragraphs 470 and 471 below). At its 1746th meeting, it discussed the situation in Papua New Guinea and decided to postpone the review of the implementation of the Convention in this State party to its seventieth session.

468. Following its sixty-eighth session, the Committee decided to schedule at its sixty-ninth session a review of the implementation of the Convention in the following States parties whose initial and periodic reports were seriously overdue: Malawi, Mozambique, Namibia, Seychelles and Saint Lucia. Mozambique was withdrawn from the list prior to the sixty-ninth session following the submission of a report.

469. At its 1779th meeting (sixty-ninth session), held on 15 August 2006, the Committee held a preliminary debate with a delegation from Malawi, on the basis of a submission by the State party in response to the list of issues sent by the Committee on 19 August 2005 (CERD/C/MWI/Q/5/Add.1). Following the preliminary debate and the assurances given by the delegation, the Chairperson sent a letter to the State party requesting that the overdue report of Malawi be submitted to the Committee as soon as possible, and no later than 30 June 2007.

470. At its 1780th meeting (sixty-ninth session), held on 15 August 2006, the Committee held a preliminary debate with a delegation from Namibia and resumed its dialogue with the State party, which had been interrupted since 1996. Following the preliminary debate and the assurances given by the delegation, the Chairperson sent a letter to the State party requesting that the overdue report of Namibia be submitted to the Committee as soon as possible, and no later than 30 June 2007.

D. Decisions

471. At its 1745th meeting, the Committee decided to request the Chairperson to send a letter to the Permanent Representative of Mozambique to the United Nations. In his letter of 10 March 2006, the Chairperson informed the Permanent Representative that the Committee had reviewed once more the situation of Mozambique in the absence of a report. Considering that the overdue report had still not been received, the Committee decided to adopt a list of issues and to submit it to the Government of Mozambique. This list of issues was prepared in order to assist Mozambique with the completion and submission of the report and to allow for a clear and precise assessment of the situation in the State party under the Convention. Therefore, the Committee decided, once again but for the last time, to grant an additional delay,

Iraq	Fifteenth to eighteenth periodic reports (due from 1999 to 2005)
Cuba	Fourteenth to seventeenth periodic reports (due from 1999 to 2005)
Gabon	Tenth to thirteenth periodic reports (due from 1999 to 2005)
Jordan	Thirteenth to sixteenth periodic reports (due from 1999 to 2005)
Uruguay	Sixteenth to nineteenth periodic reports (due from 2000 to 2006)
Haiti	Fourteenth to seventeenth periodic reports (due from 2000 to 2006)
Guinea	Twelfth to fifteenth periodic reports (due from 2000 to 2006)
Rwanda	Thirteenth to sixteenth periodic reports (due from 2000 to 2006)
Syrian Arab Republic	Sixteenth to nineteenth periodic reports (due from 2000 to 2006)
Holy See	Sixteenth to nineteenth periodic reports (due from 2000 to 2006)
Zimbabwe	Fifth to eighth periodic reports (due from 2000 to 2006)
Dominican Republic	Ninth to twelfth periodic reports (due from 2000 to 2006)
Malta	Fifteenth to eighteenth periodic reports (due from 2000 to 2006)
Cameroon	Fifteenth to eighteenth periodic reports (due from 2000 to 2006)

C. Action taken by the Committee to ensure submission of reports by States parties

466. At its forty-second session, the Committee, having emphasized that the delays in reporting by States parties hampered it in monitoring implementation of the Convention, decided that it would continue to proceed with the review of the implementation of the provisions of the Convention by the States parties whose reports were overdue by five years or more. In accordance with a decision taken at its thirty-ninth session, the Committee agreed that this review would be based upon the last reports submitted by the State party concerned and their consideration by the Committee. At its forty-ninth session, the Committee further decided that States parties whose initial reports were overdue by five years or more would also be scheduled for a review of implementation of the provisions of the Convention. The Committee agreed that

B. Reports overdue by at least five years

465. The following States parties are at least five years late in the submission of their reports:

Chad	Tenth to fourteenth periodic reports (due from 1996 to 2004)
Monaco	Initial to fifth periodic reports (due from 1996 to 2004)
Nicaragua	Tenth to fourteenth periodic reports (due from 1997 to 2005)
Malawi	Initial to fifth periodic reports (due from 1997 to 2005)
United Arab Emirates	Twelfth to sixteenth periodic reports (due from 1997 to 2005)
Burkina Faso	Twelfth to sixteenth periodic reports (due from 1997 to 2005)
Namibia	Eighth to twelfth periodic reports (due from 1997 to 2005)
Bulgaria	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Kuwait	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Niger	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Pakistan	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Panama	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Philippines	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Serbia	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Swaziland	Fifteenth to nineteenth periodic reports (due from 1998 to 2006)
Peru	Fourteenth to seventeenth periodic reports (due from 1998 to 2004)
Burundi	Eleventh to fourteenth periodic reports (due from 1998 to 2004)
Cambodia	Eighth to eleventh periodic reports (due from 1998 to 2004)

V. REVIEW OF THE IMPLEMENTATION OF THE CONVENTION IN STATES PARTIES WHOSE REPORTS ARE SERIOUSLY OVERDUE

A. Reports overdue by at least 10 years

464. The following States parties are at least 10 years late in the submission of their reports:

Sierra Leone	Fourth to nineteenth periodic reports (due from 1976 to 2006)
Liberia	Initial to fifteenth periodic reports (due from 1977 to 2005)
Gambia	Second to fourteenth periodic reports (due from 1982 to 2006)
Togo	Sixth to seventeenth periodic reports (due from 1983 to 2005)
Somalia	Fifth to sixteenth periodic reports (due from 1984 to 2005)
Papua New Guinea	Second to twelfth periodic reports (due from 1985 to 2005)
Solomon Islands	Second to twelfth periodic reports (due from 1985 to 2005)
Central African Republic	Eighth to eighteenth periodic reports (due from 1986 to 2006)
Afghanistan	Second to twelfth periodic reports (due from 1986 to 2006)
Seychelles	Sixth to fourteenth periodic reports (due from 1989 to 2005)
Ethiopia	Seventh to fifteenth periodic reports (due from 1989 to 2005)
Congo	Initial to ninth periodic reports (due from 1989 to 2005)
Saint Lucia	Initial to eighth periodic reports (due from 1991 to 2005)
Maldives	Fifth to eleventh periodic reports (due from 1993 to 2005)

IV. FOLLOW-UP TO THE CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

460. At its sixty-fifth session, the Committee decided, in accordance with paragraph 2 of rule 65 of its rules of procedure, to appoint the following members as coordinator and alternate coordinator to further the implementation of paragraph 1 of rule 65 of its rules of procedure concerning requests for additional information from States parties.

Coordinator: Mr. Morten Kjaerum

Alternate: Mr. Nourredine Amir

461. At its sixty-sixth session, the Committee adopted terms of reference for the work of the coordinator on follow-up.[1] At the 1738th meeting (sixty-eighth session), held on 28 February 2006, the coordinator on follow-up presented a report on his activities to the Committee. He also suggested to the Committee the adoption of guidelines to follow up on concluding observations, to be sent to each State party together with the concluding observation of the Committee. The guidelines were endorsed by the Committee at its 1745th meeting (sixty-eighth session), held on 1 March 2006 (see annex VI for the text of the guidelines).

462. As at 18 August 2006, follow-up reports had been received from the following States parties on the implementation of the recommendations regarding which the Committee had requested information within a year: Australia (CERD/C/AUS/CO/14/Add.1), the Lao People's Democratic Republic (CERD/C/LAO/CO/15/Add.1), and France (CERD/C/FRA/CO/16/Add.1). The Committee continued the constructive dialogue held with two of these States parties, Australia and the Lao People's Democratic Republic, by sending them letters with comments and requests for further information. The follow-up report submitted by France will be considered by the Committee at its seventieth session. Ireland also provided comments (CERD/C/IRL/CO/2/Add.1) in relation to the concluding observations which were adopted by the Committee at its sixty-sixth session following the consideration of Ireland's initial and second periodic report, with a view to assist the coordinator on follow-up in its task. The coordinator on follow-up was invited by the Government of Ireland to conduct a visit from 21 to 23 June 2006 in order to discuss and assess the measures taken by the State party in order to follow up on the Committee's conclusions and recommendations. The report of the coordinator on follow-up was then forwarded to the Irish authorities.

463. On 24 May 2006, reminders were sent by the coordinator on follow-up to the following States parties which had not yet sent information following adoption of the concluding observations of the Committee at its sixty-sixth session, held from 20 February to 10 March 2005: Azerbaijan, Bahrain and France.

Note

[1] For the terms of reference of the work of the coordinator on follow-up, see Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18), annex IV.

455. The Committee encourages the State party to continue providing awareness-raising training programmes for members of the judiciary, law enforcement officers, teachers, social workers and other public officials on the provisions of the Convention.

456. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of combating racial discrimination in connection with the preparation of the next periodic report.

457. The Committee recommends that the State party's reports be made available to the public from the time they are submitted and that the observations and recommendation of the Committee on these reports be similarly publicized.

458. The State party should within one year provide information on the ways it has followed up on the Committee's recommendations contained in paragraphs 447, 448 and 449 above pursuant to paragraph 1 of rule 65 of the rules of procedure.

459. The Committee recommends that the State party submit its seventeenth periodic report jointly with its eighteenth periodic report in a single report by 17 November 2009, and that it address all points raised in the present concluding observations.

Notes

[1] General Assembly resolution 48/134 of 20 December 1993.

[2] CERD, fifty-seventh session (2000), general recommendation 27: Discrimination against Roma, at para. 43.

[3] Ibid., para. 31.

[4] CERD, thirty-eighth session (1990), general recommendation 8: Identification with a particular racial or ethnic group (arts. 1 (1) and 4).

[5] CERD, fifty-first session (1997), general recommendation 23: Indigenous peoples, at para. 4 (d).

[6] CERD, general recommendation 23: Indigenous peoples, at para. 5.

[7] Mission to Guyana and Trinidad and Tobago, report submitted by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (E/CN.4/2004/18/Add.1), 8 January 2004, at para. 41.

[8] For comments of the State party on these concluding observations, see CERD/C/UZB/CO/5/Add.1.

[9] See general recommendation 14 (1993): Definition of discrimination, article 1, paragraph 1 of the Convention.

In light of its general recommendation 29, the Committee recommends that the State party develop and put into action a national strategy with the participation of members of affected communities, including special measures to be adopted in accordance with article 2 (2) of the Convention, in order to eliminate discrimination against members of marginalized and vulnerable descent-based groups. In particular, the Committee recommends that the State party develop legislation and practice prohibiting all discriminatory practices based on descent in employment, housing and so as to ensure equal access to health care and social security services for members of affected communities, in particular the Al-Akhdam.

450. The Committee notes with concern reports it has received that indicate that members of the Al-Akhdam community allegedly face difficulties in, if not outright barriers to, effectively exercising their right to own property (art. 5 (d) (v)).

The Committee requests the State party to provide further information regarding the right of all persons within its territory, including members of marginalized or vulnerable groups to obtain and own property.

451. While noting that the Human Rights Ministry has received over 1,200 complaints between 2002 and 2004 regarding violations of rights, the Committee notes the absence of complaints involving racial discrimination (art. 6).

The Committee requests that the State party include in its next periodic report statistical information on prosecutions launched, and penalties imposed, in cases of offences which relate to racial discrimination, and where the relevant provisions of the existing domestic legislation have been applied. The Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be mainly an indication of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. The Committee requests the State party to ensure that appropriate provisions are available in national legislation, and to inform the public about all legal remedies in the field of racial discrimination.

452. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and urges it to consider doing so.

453. The Committee recommends that the State party continue to take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2-7 of the Convention, and that it include in its next periodic report information on further action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

454. The Committee recommends the State party to ratify the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families.

445. The Committee reiterates its concern about the absence of comprehensive legislation to prevent and prohibit racial discrimination on the grounds of race, colour, descent or national or ethnic origin (art. 2).

The Committee urges that the State party take all necessary and appropriate measures to extend full protection from racial discrimination to all persons, irrespective of their race, colour, descent or national or ethnic origin. In this regard, the Committee recommends that the State party strengthen its domestic legislation and put in place a comprehensive anti-discrimination legal regime according to the requirements of article 2 of the Convention.

446. While taking note of the provisions contained in the Penal Code prescribing penalties for offences involving discrimination and acts of violence, the Committee reiterates its concern regarding the absence of any explicit penal provision in Yemeni domestic law that criminalizes and punishes the full range of conduct and activities proscribed by article 4 of the Convention.

The Committee reiterates its recommendation that the State party revise its Penal Code in order to introduce specific legislation and fully implement the provisions of article 4. The Committee also draws the attention of the State party to its general recommendation 15 and recommends that it take effective steps to ensure the effective enforcement of such legislation.

447. The Committee notes that Yemen has not yet withdrawn its reservation to article 5 (c) and (d) (iv), (vi) and (vii) of the Convention.

The Committee reiterates its recommendation that the State party consider withdrawing its reservation to article 5 (c) and (d) (iv), (vi) and (vii) of the Convention.

448. While welcoming the open door policy of the State party towards refugees coming from the Horn of Africa, the Committee is concerned about the absence of national legislation specifically defining the rights of refugees. Furthermore, it is also concerned about the poor living conditions and the reported lack of access refugees have to education, employment, health care and protection from physical abuse and maltreatment (art. 5).

The Committee draws the attention of the State party to general recommendation 30 on non-citizens (2004), and requests the State party to adopt a legislative protection framework for refugees and to remove obstacles that prevent the enjoyment of refugees of economic, social and cultural rights, notably in the areas of education, employment and health. It also recommends that the State party investigate thoroughly, impartially and effectively all reported allegations of physical abuse and maltreatment of refugees, bring those responsible to justice, and provide adequate remedies and compensation to the victims.

449. The Committee is deeply concerned at the persistent reports of de facto discrimination against descent-based, culturally distinct communities, among others, the Al-Akhdam. The Committee is particularly concerned about discrimination that interferes with or impairs the enjoyment of their economic, social and cultural rights (arts. 2 (2) and 5).

B. Positive aspects

437. The Committee welcomes the establishment of the Ministry of Human Rights in 2003.

438. The Committee notes with satisfaction the adoption of a policy of continuing education and awareness-raising programmes for members of the judiciary, the Department of Public Prosecutions and law enforcement officials.

439. The Committee welcomes the efforts made by the State party to establish a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex).

440. The Committee commends the efforts of the State party to reduce poverty, including in particular the adoption of the National Poverty Reduction Strategy for 2003-2005, the purpose of which is to improve the living conditions of marginalized groups and vulnerable people within Yemen.

441. The Committee also notes with appreciation the regularity in the submission of reports by Yemen, in compliance with the requirements of the Convention.

C. Concerns and recommendations

442. The Committee takes note of the discrepancy between the assessment of the State party, according to which Yemeni society is ethnically homogenous, and credible information the Committee has received regarding descent-based and/or culturally distinguishable groups including the Al-Akhdam.

In light of its general recommendation 4 (1973) as well as of paragraph 8 of its reporting guidelines, the Committee reiterates its recommendation to the State party that information on the ethnic composition of the population be provided in its next periodic report. It also recalls its general recommendation 8, which states that identification of ethnic or racial groups shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned, and draws the attention of the State party to general recommendation 29 (2002) on article 1 (1) of the Convention, regarding descent.

443. The Committee remains concerned at the absence of a definition of racial discrimination in domestic legislation (art. 1).

The Committee recommends to the State party that it incorporate in its domestic law a definition of racial discrimination that includes all elements set forth in article 1 of the Convention, which defines racial discrimination as discrimination on the grounds of race, colour, descent or national or ethnic origin.

444. The Committee notes with concern that the status of the Convention in domestic law is unclear and that the Convention apparently has never been directly invoked in domestic courts.

The Committee invites the State party to take all necessary steps to ensure the effective implementation of the Convention in its domestic legal order.

429. The Committee is concerned about the persistence of negative societal attitudes and stereotypes against the Roma, as exemplified by the derogatory language used in particular in paragraph 87 of the report of the State party (art. 7).

The Committee recommends that the State party increase its efforts in the fields of teaching, education, culture and information to combat prejudices, including among civil servants, against ethnic minorities such as the Roma, to promote tolerance and respect for their cultures and history, and to foster intercultural dialogue among the different ethnic groups of Ukraine.

430. The Committee is concerned about the absence of official recognition of the Ruthenian minority despite its distinct ethnic characteristics.

The Committee recommends that the State party consider recognizing Ruthenians as a national minority.

431. The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards articles 2-7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

432. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized and/or translated into Ukrainian, Russian and, to the extent possible, the languages of national minorities of Ukraine.

433. The State party should within one year provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 421, 422 and 425 above, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure.

434. The Committee recommends that the State party submit its nineteenth periodic report jointly with its twentieth and twenty-first periodic reports in a single report by 6 April 2010, and that it address all points raised in the present concluding observations.

YEMEN

435. The Committee considered the fifteenth and sixteenth periodic reports of Yemen, submitted in one document (CERD/C/YEM/16), at its 1764th and 1765th meetings (CERD/C/SR.1764 and CERD/C/SR.1765), held on 3 and 4 August 2006. At its 1784th meeting (CERD/C/SR.1784), held on 17 August 2006, it adopted the following concluding observations.

A. Introduction

436. The Committee welcomes the report submitted by the State party and expresses its appreciation for the extensive responses provided to the questions asked during the consideration of the report, and for the open and constructive dialogue with the delegation. The Committee regrets, however, that the report does not contain sufficient information regarding the practical application of the Convention.

Annex III

RULES OF PROCEDURE

Official and working languages

Rule 26

Arabic, Chinese, English, French, Russian and Spanish shall be the official languages and English, French, Russian and Spanish the working languages of the Committee.

Note: This document complements and amends the rules of procedure of the Committee on the Elimination of Racial Discrimination (CERD/C/35/Rev.3).

9. Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories in which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention.

10. Report of the Committee to the General Assembly at its sixty-first session under article 9, paragraph 2, of the Convention.

Annex II

AGENDAS OF THE SIXTY-EIGHTH AND SIXTY-NINTH SESSIONS

A. Sixty-eighth session (20 February-10 March 2006)

1. Solemn declaration by the newly elected members of the Committee under rule 14 of the rules of procedure.

2. Election of officers, according to rule 15 of the rules of procedure.

3. Adoption of the agenda.

4. Organizational and other matters.

5. Prevention of racial discrimination, including early warning measures and urgent action procedures.

6. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.

7. Submission of reports by States parties under article 9, paragraph 1, of the Convention.

8. Consideration of communications under article 14 of the Convention.

9. Follow-up procedure.

10. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

B. Sixty-ninth session (31 July-18 August 2006)

1. Adoption of the agenda.

2. Organizational and other matters.

3. Prevention of racial discrimination, including early warning measures and urgent action procedures.

4. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.

5. Submission of reports by States parties under article 9, paragraph 1, of the Convention.

6. Consideration of communications under article 14 of the Convention.

7. Follow-up procedure.

8. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

C. States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties* (42), as at 18 August 2006

Australia, Bahamas, Belize, Bahrain, Bulgaria, Burkina Faso, Canada, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Guinea, Holy See, Iceland, Iraq, Ireland, Islamic Republic of Iran, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands (for the Kingdom in Europe and the Netherlands Antilles and Aruba), New Zealand, Norway, Poland, Republic of Korea, Saudi Arabia, Seychelles, Slovakia, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

* For the amendments to enter into force, two thirds of the States parties to the Convention must accept it.

Annex I

STATUS OF THE CONVENTION

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (170) as at 18 August 2006*

Afghanistan, Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Holy See, Hungary, Honduras, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (47) as at 18 August 2006

Algeria, Australia, Austria, Azerbaijan, Belgium, Brazil, Bolivia, Bulgaria, Chile, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Netherlands, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Ukraine, Uruguay and Venezuela.

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* The following States have signed but not ratified the Convention: Andorra, Bhutan, Djibouti, Grenada, Guinea-Bissau, Nauru and Sao Tome and Principe.

506. In her dialogue with the Committee, Ms. Connors informed members about various meetings regarding treaty body reform which would take place in the coming months, including briefings on the outcome of the Malbun II meeting. She recalled that during that meeting, great interest had been expressed by participants in enhancing the harmonization of the system. Ms. Connors noted that during the Malbun II meeting, the High Commissioner had reiterated her support for the important work of treaty bodies. She also informed members that new posts would be established at OHCHR so as to enhance the capacity of the Office to work on treaty body reform. Finally, she stressed States parties' expectations regarding the receipt of proposals for reform from treaty bodies.

XII. DISCUSSIONS ON REFORM OF THE TREATY BODY SYSTEM

503. At its sixty-ninth session, the Committee had before it the report of the eighteenth meeting of persons chairing the human rights treaty bodies held at Geneva on 22 and 23 June 2006, including the report of the fifth inter-committee meeting held at Geneva from 19 to 21 June 2006 and attended by the Chairperson, Mr. Yutzis and Mr. Sicilianos. The Committee discussed in particular the point concerning proposals for reform of the United Nations human rights framework, as well as the outcome of the brainstorming meeting on reform of the treaty bodies ("Malbun II" meeting) held from 14 to 16 July in Liechtenstein and attended by Mr. Sicilianos. The Committee had a dialogue on this issue on 8 August 2006 with Ms. Jane Connors, Team Leader, Treaties and Council Branch, Office of the High Commissioner for Human Rights (OHCHR) (see CERD/C/SR.1771).

504. The Chairperson and Mr. Sicilianos reported on the outcome of the meetings and highlighted in particular the proposal of the Committee concerning the establishment of a single body to deal with individual communications, as well as the need to revise the reporting guidelines of the Committee, so as to take into account the revised guidelines on a common core document adopted by the meeting of chairpersons. The Committee requested the Secretariat to prepare draft revised guidelines for consideration at its next session.

505. A very fruitful debate ensued, during which members supported various ways of further harmonizing and increasing the effectiveness of treaty bodies, including:

(a) Developing interaction between treaty bodies and the Human Rights Council;

(b) Enhancing interaction between treaty bodies on the one hand and United Nations specialized agencies, funds and programmes, regional intergovernmental organizations and national human rights institutions on the other;

(c) The need to tackle non-reporting or delays in the submission of initial or periodic reports by States parties;

(d) Enhancing the role and use of inter-committee meetings;

(e) Providing increased resources to OHCHR for their assistance to treaty bodies, including for the implementation of the follow-up procedure of the Committee;

(f) Ensuring that gender and geographical representation are improved among treaty body members;

(g) Adopting joint general comments and providing comments to other treaty bodies on draft general comments;

(h) Harmonizing treaty body terminology.

XI. FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

499. The Committee considered the question of the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance at its sixty-eighth and sixty-ninth sessions.

500. At its sixty-eighth session, the Committee was informed of, and discussed, the fourth session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (see E/CN.4/2006/18), held from 16 to 27 January 2006 and, in particular, the mandate of the Working Group relating to the preparation of complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects. A high-level seminar on racism and the Internet and on complementary standards was held during the fourth session of the Intergovernmental Working Group, with the active participation of two members of the Committee.

501. The Committee took note, in particular, of the recommendations made by the working group that the Committee should (a) continue to develop early warning indicators, including on hate speech, and to detect outbursts of racial violence in order to recommend urgent action; and (b) further update its guidelines for State reporting so as to include the issue of racism on the Internet.

502. The Committee also took note of the Working Group's request that the Committee conduct a further study on possible measures to strengthen the implementation of the Convention through additional recommendations or the updating of monitoring procedures.

V. ACTIONS TAKEN BY THE GENERAL ASSEMBLY AT ITS SIXTIETH SESSION

407. The Committee considered this agenda item at its sixty-eighth and sixty-ninth sessions. For its consideration of this item the Committee had before it General Assembly resolution 60/144 of 16 December 2005 in which the Assembly, inter alia: (a) reiterated the call made by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to achieve universal ratification of the Convention by 2005 and for all States to consider making the declaration envisaged under article 14 of the Convention; (b) expressed concern at the serious delays in the submission of overdue reports to the Committee on the Elimination of Racial Discrimination, which impedes the effectiveness of the Committee, and made a strong appeal to all States parties to the Convention to comply with their treaty obligations; (c) invited States parties to the Convention to ratify the amendment to article 8 of the Convention; (d) welcomed the work of the Committee in applying the Convention to new and contemporary forms of racism and racial discrimination, bearing in mind the need to identify the gaps in the existing international human rights instruments, notably the International Convention on the Elimination of All Forms of Racial Discrimination, for which complementary standards are necessary.

408. The Committee also took note of the recommendation made to the General Assembly by the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action during its fourth session, held from 16 to 27 January 2006 in Geneva, requesting it to devote greater attention to the annual reports of CERD (E/CN.4/2006/18, para. 105 (f)).

have ratified the Convention, and that there was significant ethnic diversity in a number of them, warranting a close watch on incidents or trends which reflect racial discrimination and violation of rights guaranteed in the Convention. The Committee therefore stressed that greater efforts should be made to generate more awareness about the provisions of the Convention in Non-Self-Governing Territories, and especially the procedure prescribed in article 15. The Committee further stressed the need for States parties administering Non-Self-Governing Territories to mention specifically the work done to this effect in their periodic reports to the Committee.

IX. CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES TO WHICH GENERAL ASSEMBLY RESOLUTION 1514 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION

492. Under article 15 of the Convention, the Committee on the Elimination of Racial Discrimination is empowered to consider copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, transmitted to it by the competent bodies of the United Nations, and to submit to them and to the General Assembly its expressions of opinion and recommendations relating to the principles and objectives of the Convention in those territories.

493. At the request of the Committee, Mr. Pillai examined the documents made available to the Committee in order for it to perform its functions pursuant to article 15 of the Convention. At its 1781st meeting (sixty-ninth session), held on 16 August 2006, Mr. Pillai presented his report, for the preparation of which he had taken into account the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples covering its work during 2005 (A/60/23) and copies of the working papers on the 16 Territories prepared by the Secretariat for the Special Committee and the Trusteeship Council in 2005 and listed in document CERD/C/69/3, as well as in annex VII to the present report.

494. The Committee noted, as it has done in the past, that it was difficult to fulfil its functions comprehensively under article 15 of the Convention as a result of the absence of any copies of petitions pursuant to paragraph 2 (a), and owing to the fact that the copies of the reports received pursuant to paragraph 2 (b) contain only scant information directly relating to the principles and objectives of the Convention.

495. The Committee would like to repeat its earlier observation that in the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, reference is made to the relations between the Special Committee and the Committee's continuous monitoring of related developments in Territories, having regard to the relevant provisions of article 15 of the Convention. The Committee noted, however, that issues concerning racial discrimination, and directly relating to the principles and objectives of the Convention, are not reflected in the sections of the report of the Special Committee which deal with a review of its work and the future work of the Special Committee.

496. The Committee further noted that the size of the population of some of the Non-Self-Governing Territories was larger than in a few of the independent countries which

VIII. GENERAL DEBATES AND STATEMENTS

490. The Committee held a general debate on the issue of double discrimination on the grounds of race and religion in private meetings at its 1745th meeting, on 1 March 2006, and at its 1759th meeting, on 10 March 2006.

491. On 3 August 2006, at its 1763rd meeting (see CERD/C/SR.1763), the Committee held a general debate on the situation in Lebanon. On 11 August 2006, at its 1770th meeting, it adopted the following statement:

"The Committee on the Elimination of Racial Discrimination,

"Having held a debate on the situation in Lebanon on 3 August 2006,

"Deeply concerned that the continuation of the conflict may intensify racial discrimination and hatred in the region and in the wider world,

"Fully supports the statements made by the Secretary-General and by the High Commissioner for Human Rights in this regard."

Petitions in which the Committee found no violations of the Convention but made recommendations

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State Party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
Australia (3)	6/1995, Z.U.B.S.				X (never responded by the Committee)	
	8/1996, B.M.S.				X (never responded by the Committee)	X
	26/2002, Hagan	28 January 2004				
Denmark (3)	17/1999, B.L.				X (never responded by the Committee)	
	20/2000, M.B.				X (never responded by the Committee)	X
	27/2002, Kamal Qureshi				X	
Norway (1)	31/1991, Nartsinen				X (never responded by the Committee)	
Slovakia (1)	11/1998, Miroslav Lacko				X (never responded by the Committee)	

Follow-up received to date for all cases of violence or threats (Community Police Officer)

Follow-up required in cases of violence or threats but no arrest made

State party and number of cases	Complainant's name	Date	Follow-up response from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up required	Follow-up initiated
Denmark (2)	10 1997: Hadgaes	X (4/98)	(8/98)				X	
	10 1999: Kaabi Ahmad	X (4/98)	(8/98)				X	
Netherlands (2)	31 2004: Mohammed Hassan (Cafe	Not yet due				X (never replied by the Community Police Officer)		
	1 1994: J. K.	Not yet due						
Norway (1)	30 2003: The Jewish Community of Oslo	Not yet due						
Slovakia (2)	29 2003: Dagan Dumuc							
	13 1998: Anna Kapova	X (4/98)	(8/98)				X	
Switzerland (2)	31 2003: L. B. et al.	X (4/98)	(8/98)				X	

> "I have also based my decision on the fact that the statements do not refer to all Somalis as criminals or otherwise as equal to paedophiles or rapists, but only argue against the fact that a Somali association is to be consulted about a bill criminalizing offences committed particularly in the country of origin of Somalis, [which is] why Ms. Kjærsgaard finds that Somalis cannot be presumed to comment objectively on the bill, just as paedophiles and rapists cannot be presumed to comment objectively on the

2.4 On 6 October 2003, the DRC, on the petitioner's behalf, appealed the decision to the Regional Public Prosecutor who, on 18 November 2004, upheld the decision of the Copenhagen police:

> "In my opinion, the letter to the editor cannot be taken to express that Somalis are lumped together with paedophiles and rapists and that the author thereby links Somalis with authors of serious crimes. Female mutilation is an old Somali tradition that many today consider a crime due to the assault [...] against the woman. I understand Ms. Kjærsgaard's statements to mean that the criticism is aimed at the fact that the Minister wants to consult a group that many people believe to be committing a crime by performing this mutilation. Although the choice of paedophiles and rapists must be considered offensive examples, I find that there is no violation within the meaning of section 266 (b)."

2.3 By letter of 26 September 2003, the Copenhagen police notified the DRC that, in accordance with section 749, paragraph 1,[b] of the Administration of Justice Act, it had decided not to open an investigation into the matter, since it could not reasonably be presumed that a criminal offence subject to public prosecution had been committed.[c] The letter stated:

> "In my opinion, the letter to the editor cannot be taken to express that Somalis are lumped together with paedophiles and rapists and that the author thereby links Somalis with authors of serious crimes. Female mutilation is an old Somali tradition that many today consider a crime due to the assault [...] against the woman. I understand Ms. Kjærsgaard's statements to mean that the criticism is aimed at the fact that the Minister wants to consult a group that many people believe to be committing a crime by performing this mutilation. Although the choice of paedophiles and rapists must be considered offensive examples, I find that there is no violation within the meaning of section 266 (b)."

2.2 The petitioner considered that this comparison equated persons of Somali origin with paedophiles and rapists, thereby directly offending him. On 28 January 2003, the DRC, on the petitioner's behalf, reported the incident to the Copenhagen police, alleging a violation of section 266 (b)[a] of the Criminal Code.

> To me, this corresponds to asking the association of paedophiles whether they have any objections to a prohibition against child sex or asking rapists whether they have any objections to an increase in the sentence for rape. For every day that passes until the period of consultation expires and the bill can be adopted, more and more small girls will be mutilated for the rest of their lives. In all decency, this crime should be stopped now. [...]"

> I have to ask: What does a prohibition against mutilation and maltreatment have to do with racial discrimination? And why should the Danish-Somali Association have any influence on legislation concerning a crime mainly committed by Somalis? And is it the intention that the Somalis are to assess whether the prohibition against female mutilation violates their rights or infringes their culture?

> But I must admit that I opened my eyes wide when, on Ms. Espersen's list of 39 organizations, I saw the following: the Danish-Somali Association [...], the Council for Ethnic Minorities [...], the Danish Centre for Human Rights [...], the National Organization for Ethnic Minorities [...] and the Documentation and Advisory Centre on Racial Discrimination [...].

Opinion concerning communication No. 34/2004

Submitted by:	Mohammed Hassan Ghelle (represented by counsel, the Documentation and Advisory Centre on Racial Discrimination)
Alleged victim:	The petitioner
State party:	Denmark
Date of communication:	17 May 2004 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 6 March 2006,

Adopts the following:

Opinion

1.1 The petitioner is Mr. Mohammed Hassan Ghelle, a Danish citizen and resident of Somali origin, born in 1957. He claims to be a victim of violations by Denmark of articles 2, paragraph 1 (d), 4 and 6 of the Convention. He is represented by counsel, Mr. Niels-Erik Hansen of the Documentation and Advisory Centre on Racial Discrimination (DRCC).

1.2 In conformity with article 14, paragraph 6 (a), of the Convention, the Committee transmitted the communication to the State party on 3 June 2004.

Factual background

2.1 On 2 January 2003, the daily newspaper Kristeligt Dagblad published a letter to the editor by Ms. Pia Kjærsgaard, a member of the Danish Parliament (Folketinget) and leader of the Danish People's Party (Dansk Folkeparti). The letter was given the title "A crime against humanity" and stated:

> "How many small girls will be mutilated before Lene Espersen, Minister of Justice (Conservative People's Party), prohibits the crime? [...]
>
> But Ms. Espersen has stated that she needs further information before she can introduce the bill. Therefore, she is now circulating the bill for consultation among 39 organizations that will be able to make objections.
>
> Now, it is all according to the book that a Minister of Justice wants to consult various bodies about a bill of far-reaching importance. The courts, the Director of Public Prosecutions, the police etc. must be consulted.

[6] According to the petitioner, under domestic law, if the Public Prosecutor finds that there is reasonable suspicion that a certain person has committed a criminal offence, he will request the investigating judge to institute a formal judicial investigation. But if not, he must inform the complainant of this decision, who can in turn exercise his prerogative to take over the prosecution of the case on his own behalf.

[7] Lecko v. Slovakia, Case No. 11/1998, Opinion of 9 August 2001, B.J. v. Denmark, Case No. 17/1999, Opinion of 17 March 2000 and M.B. v. Denmark, Case No. 20/2000, Opinion of 13 March 2002.

[8] Supra.

[9] A. v. France, Judgment of 23 November 1993, Series A, No. 277-B. See also Jaggi v. Turkey, App. No. 19092/91, 75 D&R 207 as well as Sargin and Yagci v. Turkey, App. No. 14116-7/88, 61 D&R 250.

[10] CERD/48/Misc.6/Rev.2 (1996), para. 1

[11] The petitioner refers to the judgements of the European Court of Human Rights: Pelissier and Sassi v. France, 25 March 1999, Application No. 25444/94; Zimmerman and Steiner v. Switzerland, 13 July 1983, Application No. 8737/79 and Cunecho v. Portugal, 10 July 1984, Application No. 8990/80.

[12] Supra.

[13] Supra.

[14] Hudoyo v. Denmark, Opinion No. 10/1997, adopted on 17 March 1999 and Kashif Ahmad v. Denmark, Opinion No. 16/1999, adopted on 13 March 2000.

matter, the failure of the public prosecutor to reach any conclusion, and the failure of the Court of Serbia and Montenegro even to set a date for the consideration of the case, some six years after the incident, the petitioner has been denied any opportunity to establish whether his rights under the Convention had been violated.

9.6 The Committee notes that in previous jurisprudence it has found violations of article 6 of the Convention without finding violations of any of the substantive articles.[a] The State party's response to the claims of racial discrimination was so ineffective that it had failed to ensure appropriate protection and remedies pursuant to this provision. According to article 6, "States parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention". Although on a literal reading of the provision it would appear that an act of racial discrimination would have to be established before a petitioner would be entitled to protection and a remedy, the Committee notes that the State party must provide for the determination of this right through the national tribunals and other institutions, a guarantee which would be void were it unavailable in circumstances where a violation had not yet been established. While a State party cannot be reasonably required to provide for the determination of rights under the Convention no matter how unmeritorious such claims may be, article 6, provides protection to alleged victims if their claims are arguable under the Convention. In the current case, the petitioner presented such an arguable case but the State party's failure to investigate and adjudicate the case effectively prevented the determination of whether a substantive violation had occurred.

10. The Committee concludes that the State party failed to examine the petitioner's arguable claim of a violation of article 5 (f). In particular, it failed to investigate his claim promptly, thoroughly and effectively. Consequently, article 6 of the Convention has been violated.

11. The Committee recommends that the State party provide the petitioner with just and adequate compensation commensurate with the moral damage he has suffered. It also recommends that the State party take measures to ensure that the police, public prosecutors and the Court of Serbia and Montenegro properly investigate accusations and complaints related to acts of racial discrimination, which should be punishable by law according to article 4 of the Convention.

12. The Committee wishes to receive, within six months, information from the State party about the measures taken in light of the Committee's Opinion. The State party is requested to give wide publicity to the Committee's Opinion.

Notes

[a] Article 60 provides "Whoever denies or restricts on the grounds of distinctions in nationality, race, religion, political or other affiliation, ethnicity, sex, language, education or social status the rights of citizens embodied in the Constitution, law, or other regulations or ordinances, or a ratified international treaty, or whoever grants citizens benefits or privileges on these grounds, shall be punished with a term of imprisonment of three months to five years."

8.6 As to the alternative remedies proposed by the State party, the petitioner submits that the wrong he suffered is so serious and so clearly in violation of the Convention that only a criminal remedy could have provided redress. Consequently, civil and administrative remedies alone are not sufficiently effective. He invokes the Committee's decision of *Lacko v. Slovakia*[4]

8.7 On the possibility of introducing an alternative civil action for damages under articles 154 and 200 of the Law of Obligations, the petitioner argues that even if he had chosen to seek redress in a civil court, he would have been barred from doing so, as it is the practice to suspend civil proceedings for damages arising from criminal offences, until the relevant criminal proceedings have been completed. In any event, he would have been obliged to identify the respondent. As to taking a civil action against the club itself, he submits that this would not have been a substitute for a criminal action and that the individuals responsible would escape responsibility. In addition, any such legal action would be destined to fail, given the potential evidentiary difficulties that the petitioner would face.

Consideration of the merits

9.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

9.2 In relation to the State party's request that the Committee should reconsider its decision on admissibility on the grounds that the petitioner has not exhausted domestic remedies by failing to institute civil proceedings against the discotheque in question, the Committee recalls its jurisprudence established in the case of *Lacko v. Slovak Republic*,[5] that objectives pursued through a criminal investigation could not be achieved by means of civil or administrative remedies of the kind proposed by the State party. Therefore, the Committee sees no reason to review its decision on admissibility of 5 August 2004.

9.3 As to the merits, the Committee considers it unreasonable that the State party, including the Public Prosecutor, appear to have accepted the claim that it was impossible to identify the personnel involved in the incident in question by reason of a high turnover of staff without further investigation or enquiry on why such information would not be readily available.

9.4 The Committee does not share the State party's opinion that due to the Statute of Limitations it is now too late to initiate proceedings against those considered responsible, as the delays in the investigation appear to have been wholly attributable to the State party itself. This point supports the petitioner's argument that the investigation was neither conducted promptly nor effectively, as nearly six years after the incident (and apparently after the expiry of the time limit under the Statute of Limitations) no investigation, let alone a thorough one has been carried out. In this regard, the Committee notes that the Court of Serbia and Montenegro has still not considered the case and it is noteworthy that the State party has provided no likely date for its consideration.

9.5 The State party has equally failed to establish whether the petitioner had been refused access to a public place, on grounds of his national or ethnic origin, in violation of article 5 (f), of the Convention. Owing to the police's failure to carry out any thorough investigation into the

responsible for the damage. It would suffice to establish that the individuals responsible were employees of the club and that the petitioner had been prevented from gaining access to it because he is a Roma. Provided that the petitioner is successful and is awarded compensation, the Law also provides publication of the decision. The State party argues that, as the petitioner did not file such a civil claim, he has failed to exhaust domestic remedies, the case is thus inadmissible.

7.4 The State party contests the petitioner's position that the Court of Serbia and Montenegro would have taken a decision in accordance with the practice of the former Federal Constitutional Court, as the new court is not bound by the decision of another court, radical changes have taken place in the judicial system since the Constitutional Court took that position and the laws and the practice of the courts are increasingly influenced by international conventions. In any event, the Court of Serbia and Montenegro has not yet considered this matter.

8.1 On 12 October 2005, the petitioner commented on the State party's submission, arguing that the State appears to rely on the inefficiency of the administrative bodies (Vracar Police Station) entrusted with conducting criminal investigations as an excuse for the Public Prosecutor's inability to provide redress to the petitioner. The police limited themselves to recording the statements of the manager of the disco without corroborating them with any other sources. They failed to take basic investigative steps to elucidate the circumstances of the incident, such as looking into the club's internal records to establish the identity of the individuals employed at the time or, informing other competent authorities to hold the club legally accountable for failing to register its employees, as required by law.

8.2 The petitioner submits that the statute of limitations has been invoked as an excuse for the failure to enforce the law when it is the State itself which is responsible for the excessive length of the investigation. The Public Prosecutor has still not issued a decision on the complaint. Under international law, States are obliged to provide effective remedies to all victims of human rights violations and excuses such as a large backlog of cases, a change in the State's legal structure, coupled with its failure to take remedial measures, or other administrative difficulties of the State's own making, are no justification for the continued absence of redress.[8]

8.3 As to the State party's argument that if the petitioner's complaint had reached the criminal court, it would have been thrown out because of the high standard of proof required in criminal proceedings, the State are relying on the inefficiency of its investigative bodies to gather sufficient evidence. In the present case, it has not even passed the investigative stage.

8.4 As to the arguments that the State party's criminal courts are ill-equipped to determine damage for non-pecuniary harm, and that conducting forensic expertise to determine the size of non-pecuniary damage is time-consuming, the petitioner submits that the State party's courts appear to be guided by considerations of expediency rather than the desire for justice for victims of crime.

8.5 It remains unclear for the author why the State party argues that criminal remedies are inadequate remedies when a crime that caused non-pecuniary harm has been committed. A criminal court must be able to provide non-pecuniary damage to the aggrieved party, in addition to the identification and the punishment of those responsible.

6.4 As to the question of admissibility *ratione temporis*, the Committee noted that although the incident in front of the discotheque (18/2/2000) took place before the declaration was made under article 14 (27/6/01), what had to be considered from the point of view of the State party's obligations, is not the incident itself, which took place between individuals, but the shortcomings of the competent authorities in conducting the investigation and the absence of efforts made by the State party to guarantee an effective remedy to the petitioner, in accordance with article 6 of the Convention. As the State party had so far failed to complete its investigations, to refer this case to the new Court of Serbia and Montenegro and to offer other remedies to the petitioner, the alleged violations were ongoing and had continued since the date of the incident itself and after the State party's declaration under article 14. Consequently, the Committee found that this claim was admissible *ratione temporis* under article 14.

6.5 On the question of exhaustion of domestic remedies, the Committee observed that a complaint was made to the Federal Constitutional Court on 30 January 2002 and, at least up to the date of consideration by the Committee, had not been considered either by that Court or by its successor, the new Court of Serbia and Montenegro. While noting the State party's arguments on the ongoing changes within its judicial system, the Committee observed that the petitioner had sought to have his claims of violations of the Convention by the State party adjudicated for over four and a half years, since the incident in February 2000. In this regard, the Committee noted that the State party itself had conceded that the prospect of an early review was unlikely, given that the new Court of Serbia and Montenegro had not even been constituted. The Committee recalled that in article 14, paragraph 7, of the Convention, the requirement to exhaust domestic remedies does not apply if the application of the remedies is unreasonably prolonged. It considered that the application of remedies in this case had been unduly prolonged, and thus found that the requirements of article 14, paragraph 7 (a), had been met. On 5 August 2004, therefore, the Committee declared the case admissible.

The State party's submission on the merits and petitioner's comments thereon

7.1 On 10 June 2005, the State party informed the Committee that officers from Vrace Police Station had again interviewed the witnesses involved in this case but could take no further action, as it was not possible to identify the person(s) alleged to have committed the offence. Meanwhile, due to the application of the Statute of Limitations, the lapse of time has barred any further investigation of the case.

7.2 For the State party, even if criminal proceedings had been instituted, the petitioner would have been instructed by the Court to pursue a civil claim, due to the fact that the necessity to call expert evidence to assess the petitioners request for damages would delay the criminal proceedings and increase the costs. In cases in which claims are made for non-material damages in criminal proceedings, the claimant is instructed to pursue his/her claim through civil proceedings. If the petitioner's complaint had reached the criminal court, it would have been dismissed because of the high standard of proof required in criminal proceedings.

7.3 According to the State party, the petitioner could have pursued civil claims for compensation. The Law on Contracts and Torts and the Law on Litigation allows a victim to institute civil proceedings independently from criminal ones. A victim may institute civil proceedings for damages in a situation where the defendant in criminal proceedings has been acquitted. The same law would also have permitted the petitioner to institute civil proceedings against the club itself for which he would not have had to identify the individual allegedly

5.2 The petitioner reiterates his initial arguments on the issue of exhaustion of domestic remedies. Neither he nor his legal representatives were ever informed about the alleged decision of the former Federal Constitutional Court of 2 December 2002 to postpone consideration of the case. To his knowledge, the Court simply did not respond for more than 12 months - or rather, up to the very moment when it actually ceased to exist. Indeed, he argues, the State party has not provided a copy of the Court's decision referred to and even if it did this would not address in substance any of the above issues. The petitioner submits that a long-term backlog of cases, and a change in a State's legal framework, coupled with its failure to take remedial measures, cannot be invoked as an excuse for continuing to deny redress to an individual. On the contrary, States are obliged to organize their legal systems so that they comply with the requirements of legal certainty and provide effective remedies to all victims of human rights abuse. However, in the petitioner's view, his argument is purely academic, as the only decision the Federal Constitutional Court could have adopted in this instance, would have been to reject the petitioner's communication on the grounds that there are other, non-constitutional, remedies available.

5.3 As to the claim that he violated article 14 of the Convention, the petitioner submits that the State party misinterpreted the non-disclosure guarantee contained therein. This provision imposes a burden on the State party itself to keep the names and other personal details of all petitioners confidential and relates to "the proceedings before the designated domestic anti-discrimination body only". In a situation where the petitioner himself wishes to publicize his petition submitted to the Committee, this cannot be deemed in violation of article 14, paragraph 4, of the Convention.

Decision on admissibility

6.1 At its sixty-fifth session the Committee examined the admissibility of the communication. As to whether the petitioner had submitted the petition within the time limit set out in rule 91 (f) of the Committee's rules of procedure, the Committee recalled that, communications must be submitted to it, except in the case of duly verified exceptional circumstances, within six months after all available domestic remedies have been exhausted. It observed that the Court of Serbia and Montenegro had not yet considered the matter and therefore the six-month rule had not yet begun to run.

6.2 As to the State party's claim that the petitioner violated article 14, paragraph 4, of the Convention, by publicly disseminating the contents of his petition, the Committee recalled that paragraph 4 provides that:

> "A register of petitions shall be kept by the body established or indicated in accordance with paragraph 2 of this article, and certified copies of the register shall be filed annually through appropriate channels with the Secretary-General on the understanding that the contents shall not be publicly disclosed."

6.3 The Committee was of the view that the obligation to refrain from publishing information on individual petitions, prior to examination by the Committee, applies only to the Secretary-General of the United Nations, specifically, acting through the Secretariat, and not to the parties to the petition who remain at liberty to publish any information at their disposal relating to a petition.

On 4 April 2001, the Ministry submitted a report from which it transpires, based on an interview with the manager of the club, that a private party for specially invited guests was being held on the night in question. The manager could not identify the security personnel on duty that night, given the club's frequent personnel turnover. Consequently, as a result of the problems in establishing their identity the Public Prosecutor had difficulty in building up a case.

4.2 According to the State party, articles 124 and 128 of the Constitution of the Federal Republic of Yugoslavia, in force at the time of the alleged incident, laid down the competence of the Federal Constitutional Court to consider claims of violations of the rights and freedoms enshrined therein and to consider complaints "when other legal remedies are not available". It is submitted that these provisions are referred to in the article 14 declaration made by the FRY on 27 June 2001, in recognition of the competence of the Committee to receive and consider communications. The State party acknowledges that on 30 January 2002, the petitioner submitted a complaint to the Federal Constitutional Court, as the last instance in the matter, the consideration of which was postponed by the Court on 2 December 2002. The Court has not examined this matter yet for the following reasons: following the adoption of the Constitutional Charter of the State Union of Serbia and Montenegro on 4 February 2003, the FRY ceased to exist. Under article 12 of the Law on the implementation of the Constitutional Charter, the Federal Constitutional Court transmitted all undecided cases to the Court of Serbia and Montenegro, the competence of which in this matter is defined in article 46 of the Constitutional Charter. Considering that the judges of the Court have not been elected and that, accordingly, the Court itself has not yet been constituted, the Federal Constitutional Court continues to work, considering matters of vital importance for the functioning of the State only and leaving all other cases for consideration by the Court of Serbia and Montenegro once it is constituted and operational. In view of the fundamental changes that took place in the judicial system of the country, the prolongation of the case, the State party submits, is justifiable.

4.3 The State party contends that in April 2003, the petitioner publicly disclosed the present communication, allegedly in contravention of article 14, paragraph 4, of the Convention.

Petitioner's comments on State party submission

5.1 On 2 October 2003, the petitioner commented on the State party's submission. As to the conduct of the investigation, he notes that the prosecuting authorities have not even identified the security personnel more than three years after the submission of the criminal complaint and that the procedure has been prolonged. The excuse offered by the State party seems to imply that the police are dependent on the goodwill of the club manager in order to proceed. In addition, there is no information on the thoroughness of the investigation undertaken by the police: whether they looked into the club's internal records to establish the identity of the individuals employed at the time or whether, in the absence of such records, they informed other competent authorities in order to hold the club manager legally accountable for failing to register his employees as required by domestic labour and tax law. The police and Public Prosecutor have failed to date to contact the petitioner and or other witnesses for the purpose of obtaining a detailed description of the security personnel in question. The petitioner invokes the jurisprudence of the United Nations Committee against Torture in support of his claim that the State party has failed to conduct a comprehensive, prompt, and ultimately effective official investigation into the incident.

3.9 The petitioner refers to the Committee's general recommendation on article 5,[1] in which the Committee noted that, although article 5 "does not of itself create civil, political, economic, social or cultural rights, [it] assumes the existence and recognition of these rights. The Convention obliges States to prohibit and eliminate racial discrimination in the enjoyment of such human rights". Thus, the Committee looks to the extent to which States have ensured "the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention". Moreover, the Committee indicated that States' responsibility to ensure protection of the "rights and freedoms referred to in article 5 of the Convention" is not dependent on the good will of each government, it is mandatory. The scope of this binding obligation is to ensure the "effective implementation" of the rights contained in article 5. Indeed, CERD has held that the Convention prohibits discrimination by both private parties and public authorities. The petitioner also refers to the Human Rights Committee's interpretation of article 26, the general non-discrimination provision of the International Covenant on Civil and Political Rights on the obligation of States parties to protect against discrimination.

3.10 The petitioner claims a violation of article 3 of the Convention, as he was subjected to a form of racial segregation by being refused entry to the discotheque solely on grounds of race. The State party's failure to provide any remedies in this case constitutes a failure to comply with its obligation under article 3 to "prevent, prohibit and eradicate all practices of this nature ...". He claims a violation of article 4 (c) as by failing to prosecute the owners of the discotheque or in any way remedy the alleged discrimination against the petitioner and the other alleged victim, the prosecuting authorities - the police and the Public Prosecutor's Office - have promoted racial discrimination. In its general recommendation on article 4 of the Convention, the CERD recalled "that the provisions of article 4 are of a mandatory character. To satisfy these obligations, States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced".

3.11 The petitioner invokes article 6 of the Convention, as the State party has not provided him with a remedy for the discrimination he suffered, nor has it taken measures to punish the perpetrators or ensure that such discrimination does not recur. For the same reasons, the petitioner has to date been denied his right to civil compensation, which he may only claim in criminal proceedings. Due to the State party's failure to provide any remedies in the instant case, and notwithstanding the existing domestic criminal provisions prohibiting discrimination in access to public places, the petitioner has been forced to live with continuing uncertainty as to whether he will be admitted to the discotheque on any given date in the future.

The State party's admissibility submission

4.1 By submission of 12 August 2003, the State party submitted its response on admissibility. As to the facts, it stated that, on 20 August 2000 the Ministry of Internal Affairs was requested to collect the necessary information and to identify the persons working for the discotheque in question. Subsequent requests were made to the Ministry on 3 July and 22 October 2001, 5 February, 2 October, and 23 December 2002, 25 February 2003 and 14 May 2003.

violations". The authorities did not amend the Constitution of the FRY, nor the Federal Constitutional Court Act, which would have been necessary to formally provide for an expansion of the Federal Constitutional Court's competence to examine cases of discrimination as the final judicial instance - once an alleged victim has been unsuccessful in obtaining redress from all other regular remedies.

3.5 On 4 February 2003, the FRY adopted a new constitution and renamed itself the State Union of Serbia and Montenegro. The former Federal Constitutional Court was to be replaced by the Court of Serbia and Montenegro. Pursuant to article 46 of the Charter, this court will also be competent to consider individual complaints alleging human rights violations, including discrimination, but, like the old Court, only "if no other recourse has been provided for". Finally, article 62 (1) of the new Court of Serbia and Montenegro Act, adopted on 19 June 2003, confirmed this understanding of the competence of the Court by providing that an individual complaint can be filed only if "no other avenue of legal redress exists" within either Serbia or Montenegro. Prior to the adoption of the new Constitutional Charter as well as subsequently, domestic legislation contained provisions affording other non-constitutional, means of redress to victims of racial discrimination - including civil and/or criminal remedies. Therefore, the petitioner argues, notwithstanding the article 14 declaration, there is no (and has never been) a constitutional remedy available to victims of discrimination. The petitioner adds that the article 14 declaration itself refers to a currently non-existent court i.e. the Federal Constitutional Court, and not to the Court of Serbia and Montenegro.

3.6 Regardless of the petitioner's view in this regard and to oppose any possible objections from the State party on exhaustion of domestic remedies, the petitioner filed a submission in the Federal Constitutional Court and, in so doing, invoked the article 14 declaration. On exhaustion of domestic remedies, he concludes that the wrong suffered by him is of such a serious nature that only a criminal remedy would provide adequate redress and that he exhausted all domestic criminal remedies, as well as the merely "hypothetically available" constitutional remedy, and still obtained no redress. For the proposition that domestic remedies have been exhausted to the extent that criminal remedies are the only effective remedies to address the kind of violations at issue, the petitioner refers to the cases of *Lacko v. Slovakia* and *M.B. v. Denmark*,[6] both found to be admissible by CERD, as well as jurisprudence of the European Court of Human Rights.[7]

3.7 As to the six-months rule, the petitioner submits that although he filed a complaint in the Federal Constitutional Court, this Court never considered the matter. Moreover, as a result of the adoption of the new Constitutional Charter, this Court has since ceased to exist and is yet to be replaced by the new Court of Serbia and Montenegro which, according to the petitioner, will have no competence to consider individual discrimination cases. For the petitioner, the six-month time limit has not even started running, and his communication is therefore both timely and admissible. He invokes the jurisprudence of the European Court of Human Rights, which has accepted cases when there is a continuing situation, act or omission that can be imputed to the authorities.

3.8 The petitioner submits that the allegations of violations ought to be interpreted against a background of systematic discrimination of Roma in the State party, as well as the practical absence of any adequate form of redress. He claims a violation of article 2, paragraph 1 (d), read

The complaint

3.1 On the issue of *ratione temporis*, the petitioner acknowledges that the incident in question predates the State party's declaration under article 14 of the Convention. However, he argues that the Socialist Federal Republic of Yugoslavia (SFRY) ratified the Convention in 1967 and following its dissolution the Convention retained its binding effect with respect to all successor States, including the State party. On 4 February 2003, the Former Republic of Yugoslavia (FRY) renamed itself the State Union of Serbia and Montenegro but remained the same subject under international law. In his view, article 14 is a simple jurisdictional clause and therefore a declaration made in accordance with this article results merely in the recognition by the State concerned of another means by which the Committee can monitor implementation of the Convention. He notes that article 14 contains no express temporal limitation which would prevent the Committee from examining petitions on the basis of facts that had taken place prior to the date of deposit of the declaration. In any event, he argues, it is now more than 21 months following the declaration and the State party has yet to provide the petitioner with any redress. The petitioner refers to the jurisprudence of the European Court of Human Rights and of the Human Rights Committee.

3.2 As to "testing" as a technique used for the collection of evidence on allegations of discrimination, the petitioner submits that since the 1950s United States courts have recognized testing as an effective means of proving discrimination. He also refers to the jurisprudence of the CERD which he purports demonstrates that the Committee itself has confirmed the admissibility of such cases.[5] The petitioner also requests the opportunity to provide further clarification on this issue if the Committee considers it necessary.

3.3 The petitioner alleges that he has exhausted all effective domestic remedies available. As to constitutional remedies, he denies that there is or ever was a constitutional remedy available to individual victims of discrimination. He acknowledges that, on 27 June 2001, the FRY made a declaration under article 14, paragraph 2, of the Convention, designating the country's Federal Constitutional Court as the final domestic judicial instance entrusted with receiving and considering all complaints alleging discrimination - "providing all other domestic remedies have already been exhausted". However, according to the Constitution of the FRY, adopted on 27 April 1992, no such competence was ever granted. In fact, article 128 of the Constitution expressly stated that "the Federal Constitutional Court shall decide on a complaint [alleging various individual human right violations, including discrimination] only when other legal remedies are not available" - i.e. "when the law provides no other legal remedy for a given kind of violation".

3.4 The Federal Constitutional Court explained its competence as follows: "If dissatisfied with the final decision of the Republican Labour Office, the party is entitled to institute administrative litigation before the Serbian Supreme Court ... The Court has established that the person who filed [this] constitutional complaint had recourse to other means of legal protection, of which he availed himself ... For this reason ... the Court has decided to dismiss the constitutional complaint." The petitioner alleges that such legal reasoning led lawyers to conclude that constitutional complaints were indeed "a purely theoretical remedy since the Yugoslav legal system nominally provides protection in almost all cases of human rights

2.2 On 18 February 2000, two Roma individuals, one of whom the petitioner, and three non-Roma individuals, attempted to gain access to a discotheque in Belgrade. All were neatly dressed, well-behaved and were not under the influence of alcohol. Thus, the only apparent difference between them was the colour of their skin. There was no notice displayed to the effect that a private party was being held and that they could not enter without showing an invitation. The two individuals of Roma origin were denied entry to the club on the basis that it was a private party and they did not have invitations. When the petitioner asked the security guard how he may obtain an invitation there and then, he was told that it was not possible and that the invitations were not for sale. He was unwilling to inform the petitioner how he might obtain an invitation for future events. The three non-Roma individuals were all allowed to enter, despite having no invitations for the so-called private party and making this clear to the security personnel at the time.

2.3 On 21 July 2000, on behalf of the petitioner, the HLC filed a criminal complaint with the Public Prosecutor's Office in Belgrade. It was directed against unidentified individuals employed by the discotheque in question on suspicion of having committed a crime under article 60 of the Serbian Criminal Code.[a] The petitioner claimed a violation of his rights as well as the rights of the other Roma individual to equality, human dignity and equal access to places intended for the use of the general public. Among the international provisions invoked, the HLC put special emphases on article 5 (f) of the ICERD. It requested the Public Prosecutor's Office to identify the perpetrators and initiate a formal judicial investigation against them, or file an indictment directly in the competent court.

2.4 After seven months, in the absence of any response, the HLC sent another letter to the Public Prosecutor stressing that, should the latter dismiss the criminal complaint, and if the perpetrators had been identified by that time, the petitioner and the other alleged victim wished to exercise their legal prerogative to take over the prosecution of the case in the capacity of private subsidiary prosecutors.[b] The Public Prosecutor responded that he had requested the police on two separate occasions in August 2000 to investigate this incident but that they had failed to do so.

2.5 On 22 October 2001, the Public Prosecutor informed the HLC that it had confirmed, through police inquiries, that there had been a private party at the disco on the date in question, allegedly organized by the owner of the establishment. He also stated that the police had ignored the order to identify and question the security personnel on the evening of the incident. No further information was received from the Public Prosecutor. According to the petitioner, under articles 153 and 60 of the Criminal Procedure Code, in circumstances where the Public Prosecutor simply ignores a criminal complaint filed by a complainant regarding a crime, the complainant can only wait for the Prosecutor's decision or, alternatively, informally urge him to take action as provided for by law.

2.6 On 30 January 2002, the petitioner filed a petition in the Federal Constitutional Court stating that, by failing to identify the perpetrators and dismissing the criminal complaint, the Public Prosecutor prevented the petitioner and alleged victim from taking over the prosecution of the case on their own behalf. More than 15 months after submitting the petition to the Federal Constitutional Court, the petitioner has not received any response and thus has obtained no redress for the violations suffered.

Annex IV

DECISIONS OF THE COMMITTEE UNDER ARTICLE 14 OF THE CONVENTION

Sixty-eighth session

Opinion concerning communication No. 29/2003

Submitted by: Mr. Dragan Durmic (represented by the European Roma Rights Center and the Humanitarian Law Center)

Alleged victim: The petitioner

State party: Serbia and Montenegro

Date of the communication: 2 April 2003 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 6 March 2006,

Having concluded its consideration of communication No. 29/2003, submitted to the Committee on the Elimination of Racial Discrimination by Mr. Dragan Durmic under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into account all information made available to it by the author of the communication, his counsel and the State party,

Adopts the following decision:

1. The petitioner is Dragan Durmic, a national of Serbia and Montenegro and of Roman origin. He claims to be a victim of violations of Serbia and Montenegro of article 2, paragraph 1 (d), read together with article 5 (f), as well as articles 3, 4 (c) and 6 of the International Convention on the Elimination of Racial Discrimination. The petitioner is legally represented by the Humanitarian Law Center and the European Roma Rights Center. Serbia and Montenegro made the declaration under article 14 of the Convention on 27 June 2001.

The facts as presented by the petitioners

2.1 In 2000, the Humanitarian Law Center (HLC) carried out a series of "tests" across Serbia, to establish whether members of the Roma minority were being discriminated against while attempting to access public places. It was prompted to such action by numerous complaints alleging that the Roma are denied access to clubs, discotheques, restaurants, cafés and/or swimming pools, on the basis of their ethnic origin

State party	Slovakia (continued)
Remedy recommended	The Committee recommends that the State party take the necessary measures to ensure that practices restricting the freedom of movement and residence of Romas under its jurisdiction are fully and promptly eliminated.
Date of examination of report(s) since adoption	Second and third on 3 and August 2000 Fourth and fifth on 9 and 10 August 2004
Due date for State party response	None
Date of reply	5 April 2001
State party response	By note verbale of 5 April 2001, the State party forwarded the text of a proclamation of the Committee for Human Rights and Nationalities of the National Council of the Slovak Republic, which stated, inter alia, that the Government, other public authorities, as well as the Committee for Human Rights and Nationalities of the National Council of the Slovak Republic, even before the publication of the opinion of the Committee, had started taking specific legislative measures, as well as measures to provide suitable accommodation for the Romani families staying in provisional dwellings within the village of Čabiny. The Committee for Human Rights and Nationalities expressed appreciation for the decision of the Government to free up funds for the renovation of a building in Medzilaborce, where social flats for the families concerned will be created. The Committee made no comment on the information provided, which was reflected in its report to the General Assembly at its fifty-sixth session.
Author's response	None
Further action/ Committee's recommendation	On 8 March 2006, the State party was requested to provide an update.
State party	Slovakia
Case and No.	Mrs. L.R. et al., 31/2003
Opinion adopted on	7 March 2005
Issues and violations found	Municipal Council's act of cancelling its resolution to build low-cost housing for Roma was racially discriminatory - articles 2 (1) (a), 5 (d) (iii) and 6
Date of examination of report(s) since adoption	Report due on 28 May 2008
Due date for State party response	6 June 2005
Date of reply	9 June 2005

State party	Norway (continued)
Date of reply	21 February 2006
State party response	The State party informs the Committee that the Norwegian Government gave wide publicity to the opinion in the following forms: press statement issued by the Ministry of Justice and the Police, in which the Ministry referred to several legislative developments providing enhanced protection against racist statements; media coverage; translation of the opinion on the Ministry's web site; seminar and information circular on the opinion and implications for Norwegian law. In addition, the State party reiterates information provided on the merits to the effect that article 100 of the Constitution on freedom of expression was amended by the Storting on 30 September 2004 and entered into force immediately. The new provision allows for punishment of racist utterances to a greater extent than at the time of Mr. Sjolie's speech. Secondly, it states that section 135 (a) of the Norwegian Penal Code, which criminalizes racist utterances, has been amended twice since the Sjolie case. Both amendments have broadened the purview of section 135 (a), thus providing stronger protection against racist utterances. Thirdly, the Convention has been incorporated into Norwegian law. In addition, the State party informs the Committee that a new Act No. 33 of 3 June 2005, on prohibition of discrimination on the basis of ethnicity, national origin, ancestry, skin colour, language, and religious and ethical orientation (the Discrimination Act), which provides protection additional to section 135 (a) against discrimination on the basis of racism, was enacted. The State party refers to the establishment of the Equality and Anti-discriminatory Ombudsman on 1 January 2006, which will contribute to the enforcement of laws protecting against racism. His/her mandate is to promote equality and combat discrimination on the basis of, inter alia, ethnic origin. Considering these new developments, the State party is convinced that statements such as those made by the author in this case will be penalized in the future and considers that it has complied with the Committee's opinion.
Author's response	None
Further action/ Committee's recommendation	The State party's response should be sent to the author for comments.
State party	Slovakia
Case and No.	Anna Koptova, 13/1998
Opinion adopted on	8 August 2000
Issues and violations found	Equal right to movement and residence for Roma - article 5 (d) (i)

State party	The Netherlands
Case and No.	L.K. 4/1991
Opinion adopted on	16 March 1993
Issues and violations found	Threats constituting incitement to racial discrimination - article 4 (a), 6
Remedy recommended	The Committee recommends that the State party review its policy and procedures concerning the decision to prosecute in cases of alleged racial discrimination, in the light of its obligations under article 4 of the Convention. The Committee further recommends that the State party provide the applicant with relief commensurate with the moral damage he has suffered. Pursuant to rule 95, paragraph 5, of its rules of procedure, the Committee invites the State party, in its next periodic report under article 9, paragraph 1, of the Convention, to inform the Committee about any action it has taken with respect to the recommendations set out above.
Date of examination of report(s) since adoption	Eleventh and twelfth on 5 and 6 March 1998 Thirteenth and fourteenth on 8, 9 and 16 August 2000 fifteenth and sixteenth on 14 March 2004
Due date for State party response	None
Date of reply	N\A
State party response	None
Author's response	None
Further action/ Committee's recommendation	None - Case too old to request information of the State party
State party	Norway
Case and No.	The Jewish Community of Oslo, 30\2003
Opinion adopted on	15 August 2005
Issues and violations found	Failure to protect against dissemination of ideas, "hate speech" - articles 4 and 6
Remedy recommended	The Committee recommends that the State party take measures to ensure that statements such as those made by Mr. Sjolie in the course of his speech are not protected by the right to freedom of speech under Norwegian law. The Committee wishes to receive, within six months, information from the State party about the measures taken in the light of the Committee's opinion. The State party is requested also to give wide publicity to the Committee's opinion.
Date of examination of report(s) since adoption	Seventeenth and eighteenth reports examined on 10 and 11 August 2006
Due date for State party response	22 August 2005

State party	Denmark (continued)
Date of examination of report(s) since adoption	Fourteenth report on 23 March 2000 Fifteenth report on 12 to 13 March 2002 Sixteenth and seventeenth reports on 9 and 10 August 2006
Due date for State party response	None
Date of reply	22 August 2000
State party response	The State party submitted that a copy of the Committee's opinion had been sent to the Chief Constable of Hvidovre, to the District Prosecutor for Zealand and to the Director of Public Prosecutions. The Ministry of Justice had furthermore paid the petitioner's counsel's fee in the matter totalling DKK 22,000 plus VAT.
Author's response	None
Further action/ Committee's recommendation	No further action necessary. The State party has provided a satisfactory response.
State party	The Netherlands
Case and No.	A. Yilmaz-Dogan, 1/1984
Opinion adopted on	10 August 1988
Issues and violations found	Equality before the law in respect of the right to work, obligation of State party to prosecute - article 5 (e) (i)
Remedy recommended	The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the Convention, is of the opinion that the information as submitted by the parties sustains the claim that the petitioner was not afforded protection in respect of her right to work. The Committee suggests that the State party take this into account and recommends that it ascertain whether Mrs. Yilmaz-Dogan is now gainfully employed and, if not, that it use its good offices to secure alternative employment for her and/or to provide her with such other relief as may be considered equitable.
Date of examination of report(s) since adoption	Eleventh and twelfth on 5 and 6 March 1998, thirteenth and fourteenth on 8, 9 and 16 August 2000 fifteenth and sixteenth on 14 March 2004
Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None
Further action/ Committee's recommendation	None - case too old to request information of the State party

State party	Denmark (continued)
Action taken by the Committee	At its fifty-fifth session, held from 2 to 27 August 1999, the Committee decided to include the following text in its annual report: "Responding to suggestions and recommendations formulated by the Committee in its opinion on communication No. 10/1997 (Ziad Ben Ahmed Habassi v. Denmark), the State party, in a note verbale dated 27 May 1999, informed the Committee that the Ministry of Justice had taken due note that the Committee assessed the factual circumstances differently from the Public Prosecutor and found that the police investigation had been insufficient and that the possibility of bringing a civil declaratory action was not considered an effective remedy compared to criminal proceedings at the courts. Furthermore, the police and prosecution authorities involved in the case had been informed of the Committee's opinion and arrangements had been made for it to be transmitted to relevant financial institutions. The State party also informed the Committee that it would provide compensation for reasonable and specified expenses for judicial assistance to the author of the communication. The Committee acknowledged this information as a follow-up to the opinion adopted by the Committee under article 14. The Committee was aware that the follow-up measures raised the issue of just and adequate reparation or satisfaction referred to in article 6 of the Convention. The Committee expected to examine this issue both in general and in connection with the fourteenth periodic report of the State party, which was awaiting consideration by the Committee.
Further action/ Committee's recommendation	No further action necessary. The State party has provided a satisfactory response and has paid legal costs in connection with the communication.
State party	Denmark
Case and No.	Kashif Ahmad, 16/1999
Opinion adopted on	13 March 2000
Issues and violations found	Failure to examine claims of racial discrimination - article 6
Remedy recommended	The Committee recommends to the State party that it ensure that the police and the public prosecutors properly investigate accusations and complaints related to acts of racial discrimination which should be punishable by law according to article 4 of the Convention.

State party	Denmark (continued)
State party response (continued)	listed as the borrower. However, reasonable and specific expenses for judicial assistance in connection with the communication will be compensated. On 11 July 2006, the State party informed the Committee that on 16 June 1999, the Financial Council had sent a letter to the management of all Danish financial institutions informing them of the Committee's opinion and underlining that they should conform with the opinion in their credit policy, thus not refusing loan applications solely on the basis of the applicant's nationality. In addition, on 9 November 1999, the Danish Consumers' Ombudsman also sent a letter to a number of trade organizations and consular organizations requesting them to inform their members of the Committee's opinion and to apply the criteria mentioned in the opinion when evaluating loan applications, i.e. the applicant's permanent residence or the place where his her employment, property or family ties are to be found and not his/her nationality. Finally, it states that the Ministry of Justice paid DKK 20,000 (around 2,700 euros) plus VAT to Mr. Habassi's attorney, which corresponds to the amount requested by the attorney to cover his judicial assistance in connection with the communication.
Author's response	On 3 August 1999, the petitioner commented on the State party's response in which he stated, inter alia, that apart from the fact that the State party contests the Committee's assessment of the factual information of the case, he finds it problematic that the Ministry did not indicate what the general consequences of the Committee's opinion should or might be. The Ministry merely notified the Chief Constable of Skive, the State Prosecutor in Viborg and the Director of Public Prosecution that it has taken note of the decision. Future prosecuting practices appear to be left to the discretion of the police and the Prosecution. In addition, the Ministry seems to ignore the fact that the police and prosecution have a general obligation to conduct a thorough investigation in the event of a report of alleged acts of discrimination. In further comments on 9 August 1999, he confirmed that he had not suffered any financial loss but stated that article 6 also involves an obligation on States parties to ensure that compensation for non-economic loss is granted. He received no compensation for the insults suffered for having been subjected to racial discrimination.

Annex V

CASES IN WHICH THE COMMITTEE ADOPTED RECOMMENDATIONS AND FOLLOW-UP INFORMATION PROVIDED IN RELATION THERETO

State party	Denmark
Case and No.	Ziad Ben Ahmed Habassi, 10\1997
Opinion adopted on	17 March 1999
Issues and violations found	Discrimination with respect to loan request - article 6 in connection with 2 (d)
Remedy recommended	The Committee recommends that the State party take measures to counteract racial discrimination in the loan market. The Committee further recommends that the State party provide the applicant with reparation or satisfaction commensurate with any damage he has suffered. Pursuant to rule 95, paragraph 5, of its rules of procedure, the Committee would wish to receive information, as appropriate and in due course, on any relevant measures taken by the State party with respect to the recommendations set out in paragraphs above.
Date of examination of report(s) since adoption	Fifteenth report on 12 to 13 March 2002, sixteenth and seventeenth reports on 9 and 10 August 2006
Due date for State party responses	None
Date of reply	27 May 1999 and 11 July 2006
State party response	The Ministry of Justice took note that the Committee assessed the factual circumstances differently from the Public Prosecutor and found that the police investigation in connection with the report was insufficient and that the possibility of bringing a civil declaratory action was not considered an effective remedy compared to criminal proceedings before the courts. The Chief Constable of Skive and the State Prosecutor in Viborg have been informed by the Ministry of Justice of the Committee's opinion and that it has been taken due note of by the Ministry. Furthermore, the opinion has been forwarded to the Director of Public Prosecutions. The Ministry of Justice has requested the Ministry of Economic Affairs to inform Danish financial institutions about the Committee's opinion and that their credit policy should respect the International Convention on the Elimination of All Forms of Racial Discrimination. Concerning the recommendation that the petitioner be granted "reparation or satisfaction commensurate with any damage he has suffered", it is the opinion of the Government of Denmark that there is no basis for compensation for pecuniary loss, since the loan was actually granted to Mr. Habassi's wife, who was

[c] Section 26, paragraph 1, of the Torts Act reads: "(1) A person who is liable for unlawful violation of another person's freedom, peace, character or person shall pay compensation to the injured party for non-pecuniary damage."

[d] The State party refers to communication No. 5/1994, *C.P. v. Denmark*, at paragraphs 6.2 and 6.3, as an example of a case which was declared inadmissible by the Committee on that ground.

[e] Section 267, paragraph 1, of the Criminal Code reads: "Any person who violates the personal honour of another [person] by offensive words or conduct or by making or spreading allegations of an act likely to disparage him in the esteem of his fellow citizens, shall be liable to a fine or to imprisonment for any term not exceeding four months."

[f] Section 275, paragraph 1, of the Criminal Code reads: "The offences contained in this Part shall be subject to prosecution, except for the offences referred to in sections [...] 266 (b)."

[g] The State party refers, inter alia, to communication No. 10/1997, *Habassi v. Denmark*, Opinion adopted on 17 March 1999, and to communication No. 16/1999, *Ahmad v. Denmark*, Opinion adopted on 13 March 2000.

[h] The State party refers to its 14th (CERD/C/362/Add.1, at paragraphs 135-143) and 15th (CERD/C/408/Add.1, at paragraphs 30-45) periodic reports to the Committee, describing the background and practical application of section 266 (b).

[i] Communication No. 27/2002.

[j] See communication No. 25/2002, *Ahmad Najjati Sadic v. Denmark*, Decision on admissibility adopted on 19 March 2003, at paragraphs 6.2-6.4.

[k] See communication No. 33/2003, *Kamal Quereshi v. Denmark* (II), Opinion adopted on 9 March 2005, at paragraph 6.3.

[l] See communication No. 19/2000, *Survsur Seliman Mostafa v. Denmark*, Decision on admissibility adopted on 10 August 2001, at paragraph 7.4.

[m] See communication No. 32/2003, *Emir Sefic v. Denmark*, Opinion adopted on 7 March 2005, at paragraph 6.2.

[n] CERD, general recommendation 15: Organized violence based on ethnic origin (art. 4), at paragraph 4.

[o] CERD, general recommendation 30: Discrimination against non-citizens, at paragraph 12.

7.6 In the light of the State party's failure to carry out an effective investigation to determine whether or not an act of racial discrimination had taken place, the Committee concludes that articles 2, paragraph 1(d), and 4 of the Convention have been violated. The lack of an effective investigation into the petitioner's complaint under section 266 (b) of the Criminal Code also violated his right, under article 6 of the Convention, to effective protection and remedies against the reported act of racial discrimination.

8. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the Convention on the Elimination of All Forms of Racial Discrimination, is of the view that the facts before it disclose violations of article 2, paragraph 1 (d), article 4 and article 6 of the Convention.

9. The Committee on the Elimination of Racial Discrimination recommends that the State party should grant the petitioner adequate compensation for the moral injury caused by the above-mentioned violations of the Convention. Taking into account the Act of 16 March 2004, which, inter alia, introduced a new provision in section 81 of the Criminal Code whereby racial motivation constitutes an aggravating circumstance, the Committee also recommends that the State party should ensure that the existing legislation is effectively applied so that similar violations do not occur in the future. The State party is also requested to give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies.

10. The Committee wishes to receive from Denmark, within six months, information about the measures taken to give effect to the Committee's opinion.

[Done in Arabic, Chinese, English, French, Russian and Spanish, the English text being the original. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

Notes

[a] Section 266 (b) of the Danish Criminal Code reads: "(1) Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years. (2) When the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance."

[b] Section 749 of the Administration of Justice Act reads, in pertinent parts: "(1) The police shall dismiss a report lodged if it deems that there is no basis for initiating an investigation. (2) [...] (3) If the report is dismissed or the investigation is discontinued, those who may be presumed to have a reasonable interest therein must be notified. The decision can be appealed to the superior public prosecutor [...]."

[c] Cf. section 742, paragraph 2, of the Administration of Justice Act.

[d] Section 101, paragraph 2, of the Administration of Justice Act reads, in pertinent parts: "The decisions of the Regional Public Prosecutors on appeals cannot be appealed to the Director of Public Prosecutions or to the Minister of Justice."

7.2 The issue before the Committee is whether the State party fulfilled its positive obligation to take effective action against reported incidents of racial discrimination, having regard to the extent to which it investigated the petitioner's complaint under section 266 (b) of the Criminal Code. This provision criminalizes public statements by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination.

7.3 The Committee observes that it does not suffice, for purposes of article 4 of the Convention, merely to declare acts of racial discrimination punishable on paper. Rather, criminal laws and other legal provisions prohibiting racial discrimination must also be effectively implemented by the competent national tribunals and other State institutions. This obligation is implicit in article 4 of the Convention, under which States parties "undertake to adopt immediate and positive measures" to eradicate all incitement to, or acts of, racial discrimination. It is also reflected in other provisions of the Convention, such as article 2, paragraph 1(d), which requires States to "prohibit and bring to an end, by all appropriate means," racial discrimination, and article 6, guaranteeing to everyone "effective protection and remedies" against acts of racial discrimination.

7.4 The Committee notes that the Regional Public Prosecutor dismissed the petitioner's complaint on the ground that *Ms. Kjærgaard*'s letter to the editor did not refer to all Somalis as criminals or otherwise as equal to paedophiles or rapists, but only argued against the fact that a Somali association is to be consulted about a bill criminalizing offences committed particularly in the country of origin of Somalis. While this is a possible interpretation of *Ms. Kjærgaard*'s statements, they could however also be understood as degrading or insulting to an entire group of people, i.e. persons of Somali descent, on account of their national or ethnic origin and not because of their views, opinions or actions regarding the offending practice of female genital mutilation. While strongly condemning the practice of female genital mutilation, the Committee recalls that *Ms. Kjærgaard*'s choice of "paedophiles" and "rapists" as examples for her comparison were perceived as offensive not only by the petitioner, but also were acknowledged to be offensive in character in the letter of 26 September 2003 from the Copenhagen police. The Committee notes that although these offensive references to "paedophiles" and "rapists" deepen the hurt experienced by the petitioner, it remains the fact that *Ms. Kjærgaard*'s remarks can be understood to generalize negatively about an entire group of people based solely on their ethnic or national origin and without regard to their particular views, opinions or actions regarding the subject of female genital mutilation. It further recalls that the Regional Public Prosecutor and the police from the outset excluded the applicability of section 266 (b) to *Ms. Kjærgaard*'s case, without basing this assumption on any measures of investigation.

7.5 Similarly, the Committee considers that the fact that *Ms. Kjærgaard*'s statements were made in the context of a political debate does not absolve the State party from its obligation to investigate whether or not her statements amounted to racial discrimination. It reiterates that the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas,[9] and recalls that general recommendation 30 recommends that States parties take "resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of 'non-citizen' population groups, especially by politicians [...]."[10]

6.4 As to the State party's argument that the petitioner could have challenged the decision of the Regional Public Prosecutor not to initiate a criminal investigation under section 266 (b) of the Criminal Code before the courts, in accordance with article 63 of the Danish Constitution, the Committee notes the petitioner's uncontested claim that the statutory deadline for initiating criminal proceedings under section 266 (b) would have expired by the time the courts refer the matter back to the police. Against this background, the Committee considers that judicial review of the Regional Public Prosecutor's decision under article 63 of the Constitution would not have provided the petitioner with an effective remedy.

6.5 On the State party's argument that the petitioner should have initiated private prosecution under the general provision on defamatory statements (section 267 of the Criminal Code), the Committee recalls that, in its Opinion in *Sadic v. Denmark*,[l] it had indeed required the petitioner in that case to pursue such a course. In that case, however, the facts fell outside the scope of section 266 (b) of the Criminal Code, on the basis that the disputed comments were essentially private. In that light, section 267, which could capture the conduct in question complemented the scope of protection of section 266 (b) and was a reasonable course more appropriate to the facts of that case. In the present case, however, the statements were made squarely in the public arena, which is the central focus of both the Convention and section 266 (b). It would thus be unreasonable to expect the petitioner to initiate separate proceedings under the general provisions of section 267, after having unsuccessfully invoked section 266 (b) in respect of circumstances directly implicating the language and object of that provision.[m]

6.6 As to the possibility of instituting civil proceedings under section 26 of the Torts Act, the Committee notes the petitioner's argument that the Eastern High Court of Denmark, in a previous judgment, held that an incident of racial discrimination does not in itself constitute a violation of the honour and reputation of a person. Although mere doubts about the effectiveness of available civil remedies do not absolve a petitioner from pursuing them,[n] the Committee observes that by instituting a civil action the petitioner would not have achieved the objective pursued with his complaint under section 266 (b) of the Criminal Code to the police and subsequently to the Regional Public Prosecutor, i.e. Ms. Kjærsgaard's conviction by a criminal tribunal.[o] It follows that the institution of civil proceedings under section 26 of the Torts Act cannot be considered an effective remedy that needs to be exhausted for purposes of article 14, paragraph 7 (a), of the Convention, insofar as the petitioner seeks a full criminal investigation of Ms. Kjærsgaard's statements.

6.7 In the absence of any further objections to the admissibility of the petitioner's claims, the Committee declares the petition admissible, insofar as it relates to the State party's alleged failure fully to investigate the incident.

Consideration of the merits

7.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

4.5 The State party reiterates that Ms. Kjærsgaard's statements were devoid of any racist content. Thus, it is immaterial whether they were made by a Member of Parliament in the context of a current political debate on female genital mutilation. Therefore, no issue of an "extended" right to freedom of speech of Members of Parliament, allegedly encompassing even racist remarks, arises under article 4 of the Convention.

4.6 The State party adds that section 266 (b) satisfies the requirement in the Convention to criminalize racial discrimination[1] and that Danish law provides sufficient remedies against acts of racial discrimination.

5.1 On 25 October 2004, the petitioner replied that the title of *Ms. Kjærsgaard's* letter to the editor of the *Århusstiftstidende* ("A crime against humanity") sweepingly and unjustly accuses persons of Somali origin living in Denmark of practising female genital mutilation. Given that the offensive character of *Ms. Kjærsgaard's* statements was explicitly acknowledged by the Danish authorities (see paragraphs 2.3 and 2.4), the State party should withdraw its argument that the communication was prima facie inadmissible.

5.2 The petitioner argues that the possibility, under article 63 of the Danish Constitution, to challenge the decision of the Regional Public Prosecutor judicially is not an effective remedy within the meaning of article 6 of the Convention, because the deadline for initiating criminal proceedings under section 266 (b) of the Criminal Code would have expired by the time the courts refer the matter back to the police. The Committee must have been unaware of this fact when deciding on the case of *Jersild v. Denmark*.[2] The Danish authorities' assumption that Members of Parliament enjoy an "extended" right to freedom of speech in the context of a political debate was not confirmed by the Danish courts and therefore requires clarification by the Committee.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a petition, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 With regard to the State party's objection that the petitioner failed to establish a prima facie case for purposes of admissibility, the Committee observes that *Ms. Kjærsgaard's* statements were not of such an inoffensive character as to *ab initio* fall outside the scope of articles 2, paragraph 1 (d), 4 and 6 of the Convention. It follows that the petitioner has sufficiently substantiated his claims, for purposes of admissibility.

6.3 On the issue of exhaustion of domestic remedies, the Committee recalls that the petitioner brought a complaint under section 266 (b) of the Criminal Code, which was rejected by the Copenhagen police and, on appeal, by the Regional Public Prosecutor. It notes that the Regional Public Prosecutor stated that his decision of 18 November 2004 was final and not subject to appeal, either to the Director of Public Prosecutions or to the Minister of Justice.

3.4 The petitioner claims a full investigation of the incident and compensation as remedies for the alleged violation of articles 2, paragraph 1 (d), 4 and 6 of the Convention.

3.5 The petitioner claims that he has exhausted all available effective remedies, given that, under section 749, paragraph 1, of the Danish Administration of Justice Act, the police has full discretion whether or not to open criminal proceedings, subject to appeal to the Regional Public Prosecutor, whose decision is final and cannot be appealed to another administrative authority (as explicitly stated in the Regional Public Prosecutor's decision of 18 November 2004) or to a court. Direct legal action against Ms. Kjærgaard would have been futile in the light of the rejection of his criminal complaint and of a judgment dated 5 February 1999 of the Eastern High Court of Denmark, which held that an incident of racial discrimination does not in itself amount to a violation of the honour and reputation of a person under section 26[6] of the Torts Act.

State party's observations on admissibility and merits and petitioner's comments

4.1 On 6 September 2004, the State party made its submissions on the admissibility and, subsidiarily, on the merits of the communication.

4.2 On admissibility, the State party submits that the petitioner failed to establish a prima facie case for purposes of admissibility,[7] since the statements in Ms. Kjærgaard's letter to the editor of the Ayvstedigt Dagblad, rather than comparing Somalis with paedophiles or rapists, reflected her criticism of the Minister's decision to consult an association in the legislative process which, in her opinion, could not be considered objective with regard to the proposed bill. It concludes that the statements were racially non-discriminatory, thus falling outside the scope of application of articles 2, paragraph 1 (d), 4 and 6 of the Convention.

4.3 The State party further submits that the communication is inadmissible under article 14, paragraph 7 (a), of the Convention, as the petitioner has not exhausted all available domestic remedies: Article 63 of the Danish Constitution provides that decisions of administrative authorities may be challenged before the courts. Therefore, the petitioner would have been required to challenge the validity of the Regional Public Prosecutor's decision not to initiate a criminal investigation at court. Given that the petitioner considers himself directly offended by Ms. Kjærgaard's statements, he could also have initiated criminal proceedings under section 267, paragraph 1,[8] of the Criminal Code, which generally criminalizes defamatory statements. Pursuant to section 275, paragraph 1,[9] these offences are subject to private prosecution, a remedy that was considered to be effective by the Committee in Sadic v. Denmark.

4.4 Subsidiarily, on the merits, the State party disputes that there was a violation of articles 2, paragraph 1 (d), and 6 of the Convention, because the Danish authorities' evaluation of Ms. Kjærgaard's statements fully satisfied the requirement that an investigation must be carried out with due diligence and expedition and must be sufficient to determine whether or not an act of racial discrimination has taken place.[10] It did not follow from the Convention that prosecution must be initiated in all cases reported to the police. Rather, it was fully in accordance with the Convention to dismiss a report, e.g. in the absence of a sufficient basis for assuming that prosecution would lead to conviction. In the present case, the decisive issue of whether Ms. Kjærgaard's statements fell under section 266 (b) of the Criminal Code did not give rise to any questions of evidence. The Regional Public Prosecutor merely had to make a legal evaluation, which he did both thoroughly and adequately.

> criminalization of paedophilia and rape. The statements in question can also be taken to mean that Somalis are only compared with paedophiles and rapists as concerns the reasonableness of allowing them to comment on laws that affect them directly, and not as concerns their criminal conduct.
>
> Moreover, I have based my decision on the fact that the statements in the letter to the editor were made by a Member of Parliament in connection with a current political debate and express the general political views of a party represented in Parliament.
>
> According to their context in the letter to the editor, the statements concern the consultation of the Danish-Somali Association among others, in connection with the bill prohibiting female mutilation.
>
> Although the statements are general and very sharp and may offend or outrage some people, I have considered it essential [...] that the statements were made as part of a political debate, which, as a matter of principle, affords quite wide limits for the use of unilateral statements in support of a particular political view. According to the wording preparatory of section 266 (b) of the Criminal Code, it was particularly intended not to lay down narrow limits on the topics that can become the subject of political debate, or on the way the topics are dealt with in detail.
>
> To give you a better understanding of section 266 (b), I can inform you that the Director of Public Prosecutions has previously refused prosecution for violation of this provision in respect of statements of a similar kind. [...]
>
> My decision is final and cannot be appealed, cf. section 101 (2), second sentence, of the Administration of Justice Act."[4]

The complaint

3.1 The petitioner claims that the Regional Public Prosecutor's argument that Members of Parliament enjoy an "extended right to freedom of speech" in the political debate was not reflected in the preparatory works of section 266 (b) of the Criminal Code, which gives effect to the State party's obligations under the Convention. In 1995, a new paragraph 2 was amended to section 266 (b), providing that "the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance." During the reading of the bill in Parliament, it was stated that, in such aggravated circumstances, prosecutors should not exercise the same restraint in prosecuting incidents of racial discrimination as in the past.

3.2 The petitioner submits that, during the examination of the State party's thirteenth periodic report to the Committee, the Danish delegation stated that "a systematic" or "a more extensive dissemination of statements may speak in favour of applying section 266 (b) (2)".

3.3 The petitioner quotes further statements by Pia Kjærsgaard, including one published in a weekly newsletter of 25 April 2000: "Thus a fundamentalist Muslim does in fact not know how to act cultivated and in accordance with Danish democratic traditions. He simply does not have a clue about what it means. Commonly acknowledged principles such as speaking the truth and behaving with dignity and culture - also towards those whom you do not sympathize with - are unfamiliar ground to people like M.Z."

CERD/C/LTU/CO/3	Concluding observations of the Committee on the Elimination of Racial Discrimination - Lithuania
CERD/C/MEX/CO/15	Concluding observations of the Committee on the Elimination of Racial Discrimination - Mexico
CERD/C/UZB/CO/5	Concluding observations of the Committee on the Elimination of Racial Discrimination - Uzbekistan
CERD/C/USA/DEC/1	Decisions of the Committee on the Elimination of Racial Discrimination - United States of America
CERD/C/DNK/CO/17	Concluding observations of the Committee on the Elimination of Racial Discrimination - Denmark
CERD/C/EST/CO/7	Concluding observations of the Committee on the Elimination of Racial Discrimination - Estonia
CERD/C/MNG/CO/18	Concluding observations of the Committee on the Elimination of Racial Discrimination - Mongolia
CERD/C/NOR/CO/18	Concluding observations of the Committee on the Elimination of Racial Discrimination - Norway
CERD/C/OMN/CO/1	Concluding observations of the Committee on the Elimination of Racial Discrimination - Oman
CERD/C/UKR/CO/18	Concluding observations of the Committee on the Elimination of Racial Discrimination - Ukraine
CERD/C/YEM/CO/16	Concluding observations of the Committee on the Elimination of Racial Discrimination - Yemen
CERD/C/DEC/SUR/3	Decisions of the Committee on the Elimination of Racial Discrimination - Suriname
CERD/C/464/Add.1	Initial to sixth periodic reports of Bosnia and Herzegovina
CERD/C/495/Add.1	Fifteenth and sixteenth periodic reports of Botswana
CERD/C/471/Add.1	Ninth to thirteenth periodic reports of El Salvador
CERD/C/469/Add.19	Eighth to eleventh periodic reports of Guatemala
CERD/C/472/Add.1	Initial to fourteenth periodic reports of Guyana
CERD/C/461/Add.2	Second and third periodic reports of Lithuania
CERD/C/473/Add.1	Twelfth and fifteenth periodic reports of Mexico

Annex IX

LIST OF DOCUMENTS ISSUED FOR THE SIXTY-EIGHTH AND SIXTY-NINTH SESSIONS OF THE COMMITTEE*

CERD/C/68/1	Provisional agenda and annotations of the sixty-eighth session of the Committee
CERD/C/68/2	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the sixty-eighth session of the Committee
CERD/C/69/1	Provisional agenda and annotations of the sixty-ninth session of the Committee
CERD/C/69/2	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the sixty-ninth session of the Committee
CERD/C/69/3	Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other Territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention
CERD/C/SR.1731-1753	Summary records of the sixty-eighth session of the Committee
CERD/C/SR.1761-1781	Summary records of the sixty-ninth session of the Committee
CERD/C/BIH/CO/6	Concluding observations of the Committee on the Elimination of Racial Discrimination - Bosnia and Herzegovina
CERD/C/BWA/CO/16	Concluding observations of the Committee on the Elimination of Racial Discrimination - Botswana
CERD/C/SLV/CO/13	Concluding observations of the Committee on the Elimination of Racial Discrimination - El Salvador
CERD/C/GTM/CO/11	Concluding observations of the Committee on the Elimination of Racial Discrimination - Guatemala
CERD/C/GUY/CO/14	Concluding observations of the Committee on the Elimination of Racial Discrimination - Guyana

* This list only concerns documents issued for general distribution.

Initial and periodic reports considered by the Committee and countries considered under the review procedure	Country rapporteur
Mexico Twelfth to fifteenth periodic reports (CERD/C/473/Add.1)	Mr. Cali Tzay
Mongolia Sixteenth to eighteenth periodic reports (CERD/C/476/Add.6)	Mr. Tang
Mozambique (review procedure) Overdue reports: second to eleventh periodic reports	Mr. de Gouttes
Namibia (review procedure) Overdue reports: eighth to twelfth periodic reports	Ms. January-Bardill
Norway Seventeenth and eighteenth periodic reports (CERD/C/497/Add.1)	Mr. Thornberry
Oman Initial periodic report (CERD/C/459/Add.1)	Mr. Avtonomov
Saint Lucia (review procedure) Overdue reports: initial to eighth periodic reports	Ms. Dah
Seychelles (review procedure) Overdue reports: sixth to fourteenth periodic reports	Mr. Pillai
South Africa Initial to third periodic reports (CERD/C/461/Add.3)	Mr. Pillai
Ukraine Seventeenth and eighteenth periodic reports (CERD/C/UKR/18)	Mr. Sicilianos
Uzbekistan Third to fifth periodic reports (CERD/C/463/Add.2)	Mr. Valencia
Yemen Fifteenth and sixteenth periodic reports (CERD/C/YEM/16)	Mr. Boyd

Annex VIII

COUNTRY RAPPORTEURS FOR REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AND FOR STATES PARTIES CONSIDERED UNDER THE REVIEW PROCEDURE AT THE SIXTY-EIGHTH AND SIXTY-NINTH SESSIONS

Initial and periodic reports considered by the Committee and countries considered under the review procedure	Country rapporteur
Bosnia and Herzegovina Initial to sixth periodic reports (CERD/C/464/Add.1)	Mr. Boyd
Botswana Fifteenth and sixteenth periodic reports (CERD/C/495/Add.1)	Mr. Sicilianos
Denmark Sixteenth and seventeenth periodic reports (CERD/C/496/Add.1)	Mr. Amir
El Salvador Ninth to thirteenth periodic reports (CERD/C/471/Add.1)	Ms. Dah
Estonia Sixth and seventh periodic reports (CERD/C/465/Add.1)	Mr. Yutzis
Ethiopia (review procedure) Overdue reports: seventh to fourteenth periodic reports	Mr. Thornberry
Guatemala Eight to eleventh periodic reports (CERD/C/469/Add.1)	Mr. Avtonomov
Guyana Initial to fourteenth periodic reports (CERD/C/472/Add.1)	Mr. Yutzis
Lithuania Second and third periodic reports (CERD/C/461/Add.2)	Mr. Amir
Malawi (review procedure) Overdue reports: initial to fifth periodic reports	Mr. Amir

Annex VII

DOCUMENTS RECEIVED BY THE COMMITTEE AT ITS SIXTY-EIGHTH AND SIXTY-NINTH SESSIONS IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION

The following is a list of the working papers referred to in chapter IX submitted by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples:

A/AC.109/2005/2	Western Sahara
A/AC.109/2005/3	Tokelau
A/AC.109/2005/4	Anguilla
A/AC.109/2005/5	Bermuda
A/AC.109/2005/6	Cayman Islands
A/AC.109/2005/7	Guam
A/AC.109/2005/8	Turks and Caicos Islands
A/AC.109/2005/9	United States Virgin Islands
A/AC.109/2005/10	Pitcairn
A/AC.109/2005/11	Gibraltar
A/AC.109/2005/12	British Virgin Islands
A/AC.109/2005/13	New Caledonia
A/AC.109/2005/14	St. Helena
A/AC.109/2005/15	American Samoa
A/AC.109/2005/16	Montserrat
A/AC.109/2005/17	Falkland Islands (Malvinas)

information from the State party at any time and may, in its concluding observations, request States to provide information within a year on follow-up to some of its recommendations. The Committee would welcome receiving information between the regular reporting sessions on concrete steps taken by the State party to implement these recommendations.

4. Cooperation with national human rights institutions and non-governmental organizations

6. The Committee invites the State party to involve national human rights institutions, non-governmental organizations and other stakholders in the process of implementation of the Convention and of the concluding observations of the Committee. This can be done by convening round tables and workshops on a regular basis with the aim of assessing the progress in the implementation of the concluding observations and recommendations.

5. Concluding observation and recommendations and national action plans

7. In the Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, States were called upon to elaborate action plans in order to combat racism, racial discrimination, xenophobia and related intolerance. In States where such plans or other human rights plans of action have been developed, the concluding observations and recommendations can serve as key qualitative and quantitative indicators of progress made in the implementation of the Convention. In this way the concluding observations and recommendations become an integral part of domestic human rights strategies.

6. Assistance to follow-up activities

8. The coordinator on follow-up or, in his/her place, the alternate is available to meet with representatives of the State party to discuss the implementation of the concluding observations and recommendations.

9. The State party may request technical assistance from the Office of the High Commissioner for Human Rights to assist in the implementation of the concluding observations and recommendations.

Notes

* See Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 18 (A/59/18), annex IV.

Annex VI

GUIDELINES ON FOLLOW-UP TO CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

Introduction

1. At its sixty-fourth session, the Committee on the Elimination of All Forms of Racial Discrimination (the Committee) amended its rules of procedure relevant to follow-up activities in adopting a second paragraph to rule 65.* The paragraph provides for the appointment of a coordinator in order to further the implementation of rule 65, paragraph 1. At its sixty-fifth session, the Committee appointed a coordinator on follow-up and an alternate. The mandate of the coordinator and the alternate took effect as from the sixty-fifth session. The following guidelines are intended to assist States parties in their efforts to implement and follow up on the concluding observations and recommendations of the Committee.

1. Dissemination of the concluding observations

2. The Committee encourages the State party to disseminate the concluding observations as widely as possible. It is recommended that the concluding observations and recommendations be translated into local languages and, in particular, the languages of concerned minorities, to facilitate their participation in the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (the Convention) and the concluding observations of the Committee.

2. Coordination of implementation efforts and designation of a focal point/liaison person

3. The Committee acknowledges that its concluding observations touch on a wide range of issues and that their implementation will involve the active engagement and commitment of various ministries, departments and other stakeholders. There may consequently be a need to establish or strengthen existing mechanisms within the State party for the effective coordination of all activities related to the implementation of the Convention.

4. The State party is invited to designate a representative to act as focal point and who would be in charge of liaising with the coordinator on follow-up or the alternate. This would greatly facilitate the task of the coordinator and communication between the State party and the Committee.

3. Regular reporting on progress

5. The State party is required to submit comprehensive reports on the general fulfilment of its obligations under the Convention on a regular basis. The periodic reports should contain information on measures taken to implement the recommendations of the Committee, as requested in the reporting guidelines of the Committee. In addition, the Committee may, in accordance with article 9, paragraph 1, of the Convention, request

State party	Australia
Case and No.	Stephen Hagan, 26/2002
Opinion adopted on	20 March 2003
Issues	Use of offending term on grandstand fills within article 1
Remedy recommended	The Committee recommends that the State party take the necessary measures to secure the removal of the offending term from the sign in question, and to inform the Committee of the action it takes in this respect.
Due date for State party response	None
Date of reply	28 January 2004
State party response	The State party submitted that the petitioner had had the opportunity to bring an action in relation to the display of the sign on the grandstand before the Federal Court of Australia, claiming a violation of the Racial Discrimination Act and the Human Rights and Equal Opportunity Commission Act of 1986. It noted that the Committee had not found any violation by Australia of any obligations under the Convention and in light of this fact it does not propose to take measures to secure the removal of the term in question from the sign.
Author's response	None - response from third party expressing dissatisfaction with the opinion.
Further action/Committee's recommendation	On 7 April 2004, the Committee sent a response to the State party in which it stated, inter alia, the following: "While the Committee did not find a violation of the Convention in connection with communication No. 26/2002, it decided to make use of the faculty laid down in rule 95, paragraph 3, of its rules of procedure, which provides that 'the opinion of the Committee shall be forwarded ... together with any suggestions and recommendations the Committee may wish to make'. Accordingly, the Committee felt compelled to recall the increased sensitivities appertaining today in respect of words such as the offending term which was the object of the communication, and recommended that Australia take measures to secure the removal of the offending term from the sign in question." The Committee also noted with regret that, after having given careful consideration to its views, as stated in the State party's reply, the latter does not propose to take measures to secure the removal of the term in question from the sign, as recommended by the Committee. The Committee expressed its hope that the State party would reconsider its position in the larger context of dealing with factors contributing to racial discrimination. No further action to be taken.

State party	Denmark (continued)
Date of reply	1 July 2006
State party response	The State party responded that the same author had submitted a new complaint to the Committee (No. 33/2003), in which he alleged that the State party had failed to discharge its positive obligations to take effective action to examine and investigate the reported incidents of racial discrimination, as none of the speakers in question were prosecuted. On 9 March 2005, the Committee found no violation in this case. The State party reiterates information provided in relation thereto as to the outcome of the investigations into alleged racial statements by the speakers at the party conference. Two of the speakers were convicted and fined for having made racist comments. The other four cases were investigated but prosecution was not pursued as it was not expected to lead to conviction. The State party further commented that, as reflected in its seventeenth periodic report, between 1 January 2001 and 31 December 2003, the Danish courts considered 23 cases concerning allegations of racist statements, 10 of which concerned statements by politicians, only one of whom was acquitted.
Author's response	None
Further action/Committee's recommendation	The Committee considers the response satisfactory.
State party	Slovakia
Case and No.	Miroslav Lacko, 11/1998
Opinion adopted on	9 August 2001
Issues	Discrimination in access to public accommodation
Remedy recommended	Acting under article 14, paragraph 7 (b), of the Convention, the Committee recommends to the State party that it complete its legislation in order to guarantee the right of access to public places in conformity with article 5 (f) of the Convention and to punish the refusal of access to such places on racial grounds. The Committee also recommends that the State party take the necessary measures to ensure that the procedure for the investigation of violations is not unduly prolonged.
Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None
Further action/Committee's recommendation	No action required

State party	Denmark (continued)
Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None
Further action	No action required
State party	Denmark
Case and No.	M.B., 20 2000
Opinion adopted on	13 March 2002
Issues	Right of access to public place and failure to investigate complaint
Remedy recommended	The Committee wishes to emphasize the importance it attaches to the duty of the State party and, for that matter, of all States parties, to remain vigilant, in particular by prompt and effective police investigations of complaints, that the right established under article 5 (f), is enjoyed without discrimination by all persons, nationals or foreigners, under the jurisdiction of the State party.
Date of examination of report(s) since adoption	Fifteenth report on 12 and 13 March 2002 Sixteenth and seventeenth reports on 9 and 10 August 2006
Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None
Further action	No action required
State party	Denmark
Case and No.	Kamal Quereshi, 27 2002
Opinion adopted on	19 August 2003
Issues	Failure to investigate complaint
Remedy recommended	The Committee would wish to remain apprised of the results of the criminal complaints lodged against the speakers at the party political conference in view of the racist nature of their remarks, which were contrary to article 4 (b) of the Convention. The Committee draws the attention of the State party to the need to balance freedom of expression with the requirements of the Convention to prevent and eliminate all acts of racial discrimination, particularly in the context of statements made by members of political parties.
Date of examination of report(s) since adoption	Sixteenth and seventeenth reports on 9 and 10 August 2006
Due date for State party response	None

State party	Australia (continued)
Further action/ Committee's recommendation	No action required
State party	Australia
Case and No.	B.M.S., 8/1996
Opinion adopted on	12 March 1999
Issues	Right to work without distinction based on race, nationality, ethnic origin, etc.
Remedy recommended	Pursuant to article 14, paragraph 7 (b), of the Convention, the Committee recommends that the State party take all necessary measures and give transparency to the procedure and curriculum established and conducted by the Australian Medical Council so that the system is in no way discriminatory towards foreign candidates, irrespective of their race or national or ethnic origin. After considering several complaints concerning Australia under article 14 of the Convention, the Committee also recommends to the State party that every effort be made to avoid any delay in the consideration of all complaints by the Human Rights and Equal Opportunity Commission.
Date of examination of report(s) since adoption	Tenth, eleventh and twelfth on 1 and 2 March 2000 Thirteenth and fourteenth on 1 and 2 March 2005
Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None
Further action	No action required
State party	Denmark
Case and No.	B.J., 17/1999
Opinion adopted on	17 March 2000
Issues	Discrimination in access to public accommodation, right to compensation
Remedy recommended	While the Committee considers that the facts described in the present communication disclose no violation of article 6 of the Convention by the State party, the Committee recommends that the State party take the necessary measures to ensure that the victims of racial discrimination seeking just and adequate reparation or satisfaction in accordance with article 6 of the Convention, including economic compensation, will have their claims considered with due respect for situations where the discrimination has not resulted in any physical damage but humiliation or similar suffering.

CASES IN WHICH THE COMMITTEE FOUND NO VIOLATIONS OF THE CONVENTION BUT MADE RECOMMENDATIONS

State party	Norway
Case and No.	Narunen, Michel L. N., 3/1991
Views adopted on	15 March 1994
Issues	Alleged racial discrimination during trial for drug offences
Recommendation	The Committee recommends to the State party that every effort should be made to prevent any form of racial bias from entering into judicial proceedings which might result in adversely affecting the administration of justice on the basis of equality and non-discrimination. Consequently, the Committee recommends that in criminal cases like the one it has examined due attention be given to the impartiality of juries, in line with the principles underlying article 5 (a) of the Convention
Date of examination of report(s) since adoption	Tenth and eleventh on 14 March 1994 Twelfth, thirteenth and fourteenth on 21 August 1997 Fifteenth on 17 and 18 August 2000 Sixteenth on 15 and 18 August 2003 Seventeenth and eighteenth reports on 10 and 11 August 2006
Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None
Further action Committee's recommendation	None required
State party	Australia
Case and No.	Z.U.B.S., 6/1995
Views adopted on	26 August 1999
Issues	Discrimination on racial grounds in the terms of appointment
Recommendation	Pursuant to article 14, paragraph 7 (b), of the Convention, the Committee suggests that the State party simplify the procedures to deal with complaints of racial discrimination, in particular those in which more than one recourse measure is available, and avoid any delay in the consideration of such complaints.
Date of examination of report(s) since adoption	Tenth, eleventh and twelfth on 1 and 2 March 2000 Thirteenth and fourteenth on 1 and 2 March 2005
Due date for State party response	None
Date of reply	N/A
State party response	None
Author's response	None

State party	Slovakia (continued)
Author's response (continued)	on 18 July 2005 disclosed additional problems: the Council's urban development plan (10-15 years) with areas designated for low-cost housing for the Roma (referred to in the conversation as "socially inadaptable") apparently does not take into account the Committee's opinion. This plan is to be put to referendum after December 2005, which would thus remove the Council's responsibility for its failure to provide low-cost housing. The Deputy Mayor noted that compliance with the Committee's opinion required the cancellation of both resolutions; the opinion implied no further obligation to adopt a low-cost housing plan. With respect to the prosecution of the "petition committee", counsel argue that the State party has been vague about the kind of legal action taken against members of this committee.
Further action and Committee's recommendation	At the sixty-seventh session, the Committee noted the State party's observations and expressed the hope that the State party's authorities would continue to keep it informed of any further developments in the case. On 8 March 2006, the State party was requested to comment on the petitioner's response and to provide an update on action taken to provide the petitioners with a remedy.

Notes

[Session of the Municipal Council, Annex.]

State party	Slovakia (continued)
State party response	The Government of Slovakia presented its follow-up observations on the Committee's opinion in case No. 31/2003 (L.R. v. Slovakia), adopted at the sixty-sixth session. The Government stated that the opinion had been translated and distributed to relevant government offices and State authorities, including municipalities and the National Centre for Human Rights; in particular, the opinion had been transmitted to the town of Dobšiná and the Rožnava District Prosecutor, pointing out that the Slovak Republic had the obligation to provide the petitioners with an effective remedy, and that measures should be taken to return the petitioners to the situation they were in when the Municipal Council of Dobšiná adopted the first resolution. On 26 April 2005 the Municipal Council, taking into consideration the Committee's opinion, decided to cancel both resolutions and reached an agreement to become involved in proposals relating to low-cost housing in the concerned area. In that context, the Council would pay serious attention to the housing problems of the Roma community with a view to the practical realization of their right to adequate housing. Regarding the alleged discriminatory petition of the inhabitants of Dobšiná, legal proceedings had been initiated against the five-member "petition committee", under section 198 (a) of the Penal Code (incitement to ethnic or racial hatred).
Author's response	By letter of 22 July 2005, counsel commented on the State party's reply of 9 June 2005. They note that, notwithstanding that the Municipal Council of Dobšiná was under the obligation to "take measures to ensure that the petitioners are placed in the same position that they were in upon adoption of the first [housing] resolution", the Council's new resolution, which wrongly cancelled both housing resolutions (Nos. 251-20.III-2002-MsZ and 288/5/VIII-2002-MsZ) on 26 April 2005, only makes a passing reference to the Committee's opinion without creating the conditions necessary for the long-term resolution of the Roma's housing situation in the municipality. According to counsel, the petitioners are thus worse off than before. A municipal councillor allegedly went on record to state that the facts "had been examined by all relevant State authorities and [did not prove] any violation of the rights of any particular group." A meeting with the Deputy Mayor

CERD/C/463/Add.2	Third to fifth periodic reports of Uzbekistan
CERD/C/496/Add.1	Sixteenth and seventeenth periodic reports of Denmark
CERD/C/465/Add.1	Sixth and seventh periodic reports of Estonia
CERD/C/471/Add.2	Tenth to thirteenth periodic reports of Israel
CERD/C/476/Add.6	Sixteenth to eighteenth periodic reports of Mongolia
CERD/C/497/Add.1	Seventeenth and eighteenth periodic reports of Norway
CERD/C/OMN/1	Initial periodic report of Oman
CERD/C/461/Add.3	Initial to third periodic reports of South Africa
CERD/C/UKR/18	Seventeenth and eighteenth periodic reports of Ukraine
CERD/C/YEM/16	Fifteenth and sixteenth periodic reports of Yemen
CERD/C/AUS/CO/14/Add.1	Comments on the concluding observations of the Committee on the Elimination of Racial Discrimination - Australia
CERD/C/IRL/CO/2/Add.1	Comments on the concluding observations of the Committee on the Elimination of Racial Discrimination - Ireland
CERD/C/LAO/CO/15/Add.1	Comments on the concluding observations of the Committee on the Elimination of Racial Discrimination - Lao People's Democratic Republic
CERD/C/MWI/Q/5/Add.1	Written replies to the list of issues formulated by the Committee on the Elimination of Racial Discrimination under the review procedure - Malawi
CERD/C/UZB/CO/5/Add.1	Comments on the concluding observations of the Committee on the Elimination of Racial Discrimination - Uzbekistan

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